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Statutes:

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Annotations of Judicial Decisions:

Case annotations reflecting decisions posted to LexisNexis® through April 3, 2015. These annotations will appear in the following traditional reporter sources: Georgia Reports; Georgia Appeals Reports; Southeastern Reporter; Supreme Court Reporter; Federal Reporter; Federal Supplement; Federal Rules Decisions; Lawyers' Edition; United States Reports; and Bankruptcy Reporter.

Annotations of Attorney General Opinions:

Constructions of the Official Code of Georgia Annotated, prior Codes of Georgia, Georgia Laws, the Constitution of Georgia, and the Constitution of the United States by the Attorney General of the State of Georgia posted to LexisNexis® through April 3, 2015.

Other Annotations:

References to:

Emory Bankruptcy Developments Journal.
Emory International Law Review.
Emory Law Journal.
Georgia Journal of International and Comparative Law.
Georgia Law Review.
Georgia State University Law Review.
John Marshall Law Review.
Mercer Law Review.
Georgia State Bar Journal.
Georgia Journal of Intellectual Property Law.
American Jurisprudence, Second Edition.
American Jurisprudence, Pleading and Practice.
American Jurisprudence, Proof of Facts.
American Jurisprudence, Trials.
Corpus Juris Secundum.
Uniform Laws Annotated.
American Law Reports, First through Sixth Series.
American Law Reports, Federal.

Tables:

In Volume 41, a Table Eleven-A comparing provisions of the 1976 Constitution of Georgia to the 1983 Constitution of Georgia and a Table Eleven-B comparing provisions of the 1983 Constitution of Georgia to the 1976 Constitution of Georgia.

An updated version of Table Fifteen which reflects legislation through the 2015 Regular Session of the General Assembly.

Indices:

A cumulative replacement index to laws codified in the 2015 supplement pamphlets and in the bound volumes of the Code.

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TITLE 49

SOCIAL SERVICES

Chap.

CHAPTER 2

DEPARTMENT OF HUMAN SERVICES

Article 1

General Provisions

Sec.

ARTICLE 1

GENERAL PROVISIONS

49-2-14.1. Definitions; records check requirement for licensing certain facilities.

(a) As used in this Code section, the term:

(1) "Conviction" means a finding or verdict of guilty or a plea of guilty regardless of whether an appeal of the conviction has been sought.

(2) "Crime" means commission of the following offenses:

(A) A violation of Code Section 16-5-1;

(B) A violation of Code Section 16-5-21, relating to aggravated assault;

(C) A violation of Code Section 16-5-24, relating to aggravated battery;

(D) A violation of Code Section 16-5-70, relating to cruelty to children;

(E) A violation of Article 8 of Chapter 5 of Title 16;

(F) A violation of Code Section 16-6-1, relating to rape;

(G) A violation of Code Section 16-6-2, relating to aggravated sodomy;

(H) A violation of Code Section 16-6-4, relating to child molestation;

(I) A violation of Code Section 16-6-5, relating to enticing a child for indecent purposes;

(J) A violation of Code Section 16-6-5.1, relating to sexual assault against persons in custody, detained persons, or patients in hospitals or other institutions;

(K) A violation of Code Section 16-6-22.2, relating to aggravated sexual battery;

(L) A violation of Code Section 16-8-41; or

(M) Any other offense committed in another jurisdiction that, if committed in this state, would be deemed to be a crime listed in this paragraph without regard to its designation elsewhere.

(3) "Criminal record" means any of the following:

(A) Conviction of a crime;

(B) Arrest, charge, and sentencing for a crime where:

(i) A plea of nolo contendere was entered to the charge;

(ii) First offender treatment without adjudication of guilt pursuant to the charge was granted; or

(iii) Adjudication or sentence was otherwise withheld or not entered on the charge; or

(C) Arrest and being charged for a crime if the charge is pending, unless the time for prosecuting such crime has expired pursuant to Chapter 3 of Title 17.

(4) "Facility" means a child welfare agency required to be licensed under Code Section 49-5-12.

(5) "GCIC" means the Georgia Crime Information Center established under Article 2 of Chapter 3 of Title 35.

(6) "GCIC information" means criminal history record information as defined in Code Section 35-3-30.

(7) "License" means the document issued by the department to authorize the facility to operate.

(8) "Owner" means any individual or any person affiliated with a corporation, partnership, or association with 10 percent or greater ownership interest in a facility providing care to persons under the license of the facility in this state and who:

(A) Purports to or exercises authority of the owner in a facility;

(B) Applies to operate or operates a facility;

(C) Maintains an office on the premises of a facility;

(D) Resides at a facility;

(E) Has direct access to persons receiving care at a facility;

(F) Provides direct personal supervision of facility personnel by being immediately available to provide assistance and direction during the time such facility services are being provided; or

(G) Enters into a contract to acquire ownership of a facility.

(9) "Records check application" means fingerprints in such form and of such quality as prescribed by the Georgia Crime Information Center under standards adopted by the Federal Bureau of Investigation and a records search fee to be established by the department by rule and regulation, payable in such form as the department may direct to cover the cost of obtaining criminal background information pursuant to this Code section.

(b) An owner with a criminal record shall not operate or hold a license to operate a facility, and the department shall revoke the license of any owner operating a facility or refuse to issue a license to any owner operating a facility if it determines that such owner has a criminal record; provided, however, that an owner who holds a license to operate a facility on or before June 30, 2007, shall not have his or her license revoked prior to a hearing being held before a hearing officer pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(c)(1) Prior to approving any license for a new facility and periodically as established by the department by rule and regulation, the

department shall require an owner to submit a records check application. The department shall establish a uniform method of obtaining an owner's records check application.

(2)(A) Unless the department contracts pursuant to subparagraph (B) of this paragraph, the department shall transmit to the GCIC the fingerprints and records search fee from each fingerprint records check application in accordance with Code Section 35-3-35. Upon receipt thereof, the GCIC shall promptly transmit the fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall promptly conduct a search of its records and records to which it has access. Within ten days after receiving fingerprints acceptable to the GCIC and the fee, the GCIC shall notify the department in writing of any criminal record or if there is no such finding. After a search of Federal Bureau of Investigation records and fingerprints and upon receipt of the bureau's report, the department shall make a determination about an owner's criminal record and shall notify the owner in writing as to the department's determination as to whether the owner has or does not have a criminal record.

(B) The department may either perform criminal background checks under agreement with the GCIC or contract with the GCIC and appropriate law enforcement agencies which have access to GCIC and Federal Bureau of Investigation information to have those agencies perform for the department criminal background checks for owners. The department or the appropriate law enforcement agencies may charge reasonable fees for performing criminal background checks.

(3)(A) The department's determination regarding an owner's criminal record, or any action by the department revoking or refusing to grant a license based on such determination, shall constitute a contested case for purposes of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," except that any hearing required to be held pursuant thereto may be held reasonably expeditiously after such determination or action by the department.

(B) In a hearing held pursuant to subparagraph (A) of this paragraph or subsection (b) of this Code section, the hearing officer shall consider in mitigation the length of time since the crime was committed, the absence of additional criminal charges, the circumstances surrounding the commission of the crime, other indicia of rehabilitation, the facility's history of compliance with the regulations, and the owner's involvement with the licensed facility in arriving at a decision as to whether the criminal record requires the denial or revocation of the license to operate the facility. Where a hearing is required, at least 30 days prior to such hearing, the

hearing officer shall notify the office of the prosecuting attorney who initiated the prosecution of the crime in question in order to allow the prosecutor to object to a possible determination that the conviction would not be a bar for the grant or continuation of a license as contemplated within this Code section. If objections are made, the hearing officer shall take such objections into consideration in considering the case.

(4) The GCIC, the department, any law enforcement agency, and the employees of any such entities shall not be responsible for the accuracy of information nor have any liability for defamation, invasion of privacy, negligence, or any other claim in connection with any dissemination of information or determination based thereon pursuant to this Code section.

(d) All information received from the Federal Bureau of Investigation or the GCIC shall be for the exclusive purpose of approving or denying the granting of a license to a new facility or the revision of a license of an existing facility when a new owner is proposed and shall not be released or otherwise disclosed to any other person or agency. All such information collected by the department shall be maintained by the department pursuant to laws regarding and the rules or regulations of the Federal Bureau of Investigation and the GCIC, as is applicable. Penalties for the unauthorized release or disclosure of any such information shall be as prescribed pursuant to laws regarding and rules or regulations of the Federal Bureau of Investigation and the GCIC, as is applicable.

(e) The requirements of this Code section are supplemental to any requirements for a license imposed by Article 3 of Chapter 5 of this title or Article 11 of Chapter 7 of Title 31.

(f) The department shall promulgate written rules and regulations to implement the provisions of this Code section. (Code 1981, § 49-2-14.1, enacted by Ga. L. 2007, p. 305, § 1/HB 155; Ga. L. 2008, p. 1145, § 3/HB 984; Ga. L. 2009, p. 453, § 2-1/HB 228; Ga. L. 2013, p. 524, § 3-8/HB 78; Ga. L. 2014, p. 444, § 2-13/HB 271.)

The 2014 amendment, effective July 1, 2014, deleted ", relating to murder and felony murder" following "Code Section 16-5-1" at the end of subparagraph (a)(2)(A).

49-2-16. Council for Welfare Administration.

Reserved Repealed by Ga. L. 2015, p. 552, § 12/SB 138, effective July 1, 2015.

Editor's notes. — This Code section was based on Code 1981, § 49-2-16, enacted by Ga. L. 1996, p. 1423, § 1; Ga. L. 2009, p. 453, § 2-1/HB 228.

49-2-18. Director of Division of Family and Children Services; appointment; qualifications.

(a) The Governor shall appoint the director of the Division of Family and Children Services of the department who shall serve at the pleasure of the Governor. The director shall be an employee of the department but shall report directly to the Governor.

(b) The director shall have a college degree and at least one of the following qualifications:

(1) Educational background or managerial experience involving work with vulnerable populations;

(2) Work experience in a setting dealing with the safety or well-being of children or other vulnerable populations; or

(3) Experience working in or managing a complex, multidisciplinary business or government agency. (Code 1981, § 49-2-18, enacted by Ga. L. 2015, p. 552, § 1/SB 138.)

Effective date. — This Code section became effective July 1, 2015.

49-2-19. DFCS State Advisory Board; membership; duties; officers and committees.

(a) There is established the DFCS State Advisory Board which shall consist of 20 members appointed by the Governor as follows:

(1) One representative from each of the 15 DFCS regions; and

(2) Five members who are either state legislators or representatives from the fields of:

(A) Child welfare;

(B) Former youth in foster care;

(C) Public health or behavioral health and developmental disabilities;

(D) Private child welfare care provider; or

(E) Juvenile justice.

(b) The advisory board shall review and make recommendations to the director of the Division of Family and Children Services of the department regarding issues relating to the protection of children and the welfare and public assistance functions of the division. Such review and recommendations shall include, but not be limited to, the following:

(1) Examination of current law, rules and regulations, and policy and recommendations to improve the ability of the division to

increase the safety of children, respond to child maltreatment, and ensure the well-being of and timely permanency for children who are referred to and involved in the child welfare system;

(2) Propose legislative or administrative changes to policies and programs that are integral to the protection of children and the welfare and public assistance functions of the division;

(3) Examination of caseload assignments and ratios of child protective services workers and recommendations for reasonable expectations for such workers and supervision and support needed to perform their jobs; and

(4) Recommendations on improved collaboration among state, local, community, and public and private stakeholders in child welfare programs and services that are administered by the division.

(c) The advisory board shall elect a chairperson from among its membership. The advisory board may elect such other officers and establish committees as it considers appropriate.

(d) The advisory board shall meet at least quarterly and at such additional times as it shall determine necessary to perform its duties. The advisory board shall also meet on the call of the chairperson, the director of the Division of Family and Children Services of the department, or the Governor. The director of the Division of Family and Children Services of the department shall participate in such meetings and provide a quarterly report to the advisory board in advance of each quarterly meeting.

(e) Members shall serve without compensation, although each member of the advisory board shall be reimbursed for actual expenses incurred in the performance of his or her duties from funds available to the advisory board; provided, however, that any legislative member shall receive the allowances authorized by law for legislative members of interim legislative committees and any members who are state employees shall be reimbursed for expenses incurred by them in the same manner as they are reimbursed for expenses in their capacities as state employees. (Code 1981, § 49-2-19, enacted by Ga. L. 2015, p. 552, § 1/SB 138.)

Effective date. — This Code section became effective July 1, 2015.

CHAPTER 3

COUNTY AND DISTRICT DEPARTMENTS, BOARDS, AND DIRECTORS OF FAMILY AND CHILDREN SERVICES

49-3-2. Appointment of county board members; terms; vacancies; per diem and expenses; role of county board.

(a) Each county board shall consist of between five and seven members who shall be appointed by the governing authority of the county. No person serving as a member of a county board on July 1, 2015, shall have such person's term of office shortened by this subsection. On and after that date, however, vacancies in such office which occur for any reason, including but not limited to expiration of the term of office, shall be filled by appointment of the county governing authority except as provided in subsection (c) of this Code section. No elected officer of the state or any subdivision thereof shall be eligible for appointment to the county board. In making appointments to the county board of family and children services, the governing authority shall ensure that appointments are reflective of gender, race, ethnic, and age characteristics of the county population. Further, the governing authority shall ensure that all appointments made on or after July 1, 2015, are made from the following categories:

(1) Pediatric health care providers;

(2) Appropriate school personnel;

(3) Emergency responders;

(4) Law enforcement personnel;

(5) Private child welfare service providers;

(6) Alumni of the child welfare system;

(7) Mental health care providers;

(8) Former foster parents; and

(9) Leaders within the faith-based community.

(b) The term of office of members of the county board shall be for five years and until the appointment and qualification of their respective successors.

(c) Appointments to fill vacancies on the county board caused by death, resignation, or removal before the expiration of a term shall be made for the remainder of such term in the same manner as provided in this Code section for original appointments. In the event that the governing authority of the county shall fail to fill any such vacancy or any vacancy caused by expiration of term on the county board within 90 days after such vacancy occurs, the commissioner may appoint members to the county board to fill such vacancies.

(d) Members of the county board shall serve without compensation, except that they shall be paid a per diem of not less than $15.00 per month and shall be reimbursed for traveling and other expenses actually incurred in the performance of their official duties; provided, however, that the gross expenses assessed against a county shall not exceed the amount of the budget of the county previously set aside and levied by the county authorities for such expenses.

(e) The role of the county board shall be to protect the well-being of this state's children while preserving family integrity. County boards may review the administration of all welfare and public assistance functions for the county, including such programs as temporary assistance for needy families (TANF), supplemental nutrition assistance program (SNAP), employment services, child protective services, foster care, and adoptions, and shall report no less than annually and not later than December 15 of each year to the director of the Division of Family and Children Services of the department the effectiveness of the county department's provision of services, the needs of the community, and its recommendations for improved operations of the county department. County boards shall serve as an active liaison and a link between the county department and the local community. County boards shall support the overall mission of the Division of Family and Children Services of the department. (Ga. L. 1937, p. 355, § 10; Ga. L. 1963, p. 222, § 1; Ga. L. 1981, p. 960, § 1; Ga. L. 1988, p. 1354, § 1; Ga. L. 1994, p. 505, § 1; Ga. L. 2015, p. 552, § 2/SB 138.)

The 2015 amendment, effective July 1, 2015, rewrote this Code section.

49-3-6. Functions of county department.

(a) The primary purpose of county departments shall be to protect children. To achieve this primary purpose, the county departments shall, in accordance with rules and regulations of the Division of Family and Children Services of the department:

(1) Investigate reports of abuse and neglect;

(2) Assess, promote, and support the safety of a child in a safe and stable family or other appropriate placement in response to allegations of abuse or neglect;

(3) Work cooperatively with law enforcement regarding reports that include criminal conduct allegations; and

(4) Without compromising child safety, coordinate services to achieve and maintain permanency on behalf of the child, strengthen the family, and provide prevention, intervention, and treatment services pursuant to this title.

(b) In addition to the purpose in subsection (a) of this Code section, and subject to the rules and regulations of the Board of Human Services, the county department shall be charged with the administration of all forms of public assistance in the county, including home relief; indoor and outdoor care for those in need; temporary assistance for needy families; old-age assistance; aid to the blind and otherwise disabled; the care and treatment of dependent and neglected children; and such other welfare activities as shall be delegated to it by the Division of Family and Children Services of the department or by the county commissioners. (Ga. L. 1937, p. 355, § 13; Ga. L. 1995, p. 1302, § 14; Ga. L. 1997, p. 1021, § 7; Ga. L. 2009, p. 453, §§ 2-2, 2-3/HB 228; Ga. L. 2015, p. 422, § 5-100/HB 310; Ga. L. 2015, p. 552, § 3/SB 138.)

The 2015 amendments. — The first 2015 amendment, effective July 1, 2015, inserted "juvenile" preceding "probation officer" in the last sentence of the previously existing provisions of this Code section. The second 2015 amendment, effective July 1, 2015, rewrote this Code section. See Code Commission note regarding the effect of these amendments.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2015, the amendment to this Code section by Ga. L. 2015, p. 422, § 5-100/HB 310, was treated as impliedly repealed and superseded by Ga. L. 2015, p. 552, § 3/SB 138, due to irreconcilable conflict. See County of Butts v. Strahan, 151 Ga. 417 (1921); Keener v. McDougall, 232 Ga. 273 (1974).

49-3-9. DFCS Regional Advisory Board established in each region; membership; purpose; meetings.

There is established in each region a DFCS Regional Advisory Board. Each regional advisory board shall be composed of at least five members and shall include the director and at least one board member of each county department of family and children services within the region as selected by the DFCS regional director. The DFCS regional director may appoint additional members who are representatives from the categories included in paragraphs (1) through (9) of subsection (a) of Code Section 49-3-2. The purpose of the regional advisory boards shall be to improve communication and coordination between the county departments of family and children services of the counties within the

region, to improve and streamline service delivery by the county departments, and to provide for the consistent application of state policy of the Division of Family and Children Services of the department within the county departments within each DFCS region. Each regional advisory board shall meet at least quarterly. (Code 1981, § 49-3-9, enacted by Ga. L. 2015, p. 552, § 4/SB 138.)

Effective date. — This Code section became effective July 1, 2015.

CHAPTER 4

PUBLIC ASSISTANCE

ARTICLE 1

GENERAL PROVISIONS

49-4-1. Short title.

JUDICIAL DECISIONS

Cited in Fedina v. Larichev, 322 Ga. App. 76, 744 S.E.2d 72 (2013).

49-4-6. Reserves, income, and resources to be disregarded.

(a) In determining eligibility for and the amount and kind of public assistance to be provided, the board shall prescribe by regulations reasonable emergency reserves and the income and resources which may be exempt and disregarded. With respect to any category of assistance, the income and resources to be disregarded shall not be in excess of the amounts and kinds authorized under the federal Social Security Act and shall not be less than the amounts and kinds of income and resources required to be disregarded by the federal Social Security Act and any other act of Congress relating to the assistance programs in which federal financial participation is authorized under Titles IV, XVI, XIX, and XX of the federal Social Security Act.

(b) Notwithstanding any other provision of this Code section, this chapter, or state law, to the extent that such disregard does not violate federal law or terminate or decrease the state's eligibility for federal funding for public assistance or for disabled persons, the Department of Human Services, the Department of Community Health, and their successors shall disregard for the purpose of eligibility for public assistance or assistance for disabled persons any funds or property held in trust for a disabled person by a community trust created and administered in accordance with Chapter 10 of Title 30, a trust for a person with one or more impairments with substantially similar provisions for distributions, or any noncash distributions from such trusts. (Ga. L. 1965, p. 385, § 14; Ga. L. 1967, p. 878, § 5; Ga. L. 1982, p. 3, § 49; Ga. L. 1987, p. 1435, § 1; Ga. L. 1990, p. 45, § 1; Ga. L. 1996, p. 804, § 3; Ga. L. 1999, p. 296, § 24; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2015, p. 5, § 49/HB 90.)

The 2015 amendment, effective March 13, 2015, part of an Act to revise, modernize, and correct the Code, deleted former subsection (b), which read: "For purposes of applying the $50.00 child support disregard provided for in Title IV of the federal Social Security Act, amounts paid by the Social Security Administration under the Old Age Survivors and Disability Insurance (OASDI) program, payments made by the United States Department of Veterans Affairs to the family, and any other benefits not assignable to the state pursuant to Title IV of the federal Social Security Act shall not be considered child support."; and redesignated

former subsection (c) as present subsection (b).

49-4-15. Fraud in obtaining public assistance, food stamps, or Medicaid; penalties; recovery of overpayments.

(a) Any person who by means of a false statement, failure to disclose information, or impersonation, or by other fraudulent device, obtains or attempts to obtain, or any person who knowingly or intentionally aids or abets such person in the obtaining or attempting to obtain:

(1) Any grant or payment of public assistance, food stamps, or medical assistance (Medicaid) to which he or she is not entitled;

(2) A larger amount of public assistance, food stamp allotment, or medical assistance (Medicaid) than that to which he or she is entitled; or

(3) Payment of any forfeited grant of public assistance;

or any person who, with intent to defraud the department, aids or abets in the buying or in any way disposing of the real property of a recipient of public assistance shall be guilty of a misdemeanor unless the total amount of the value of public assistance, food stamps, and medical assistance (Medicaid) so obtained exceeds $1,500.00, in which event such person shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than five years. In determining the amount of value of public assistance, food stamps, and medical assistance (Medicaid) obtained by false statement, failure to disclose information, or impersonation, or other fraudulent device, the total amount obtained during any uninterrupted period of time shall be treated as one continuing offense.

(b) It shall be a fraudulent device within the meaning of subsection (a) of this Code section, and punishable as therein provided, for any person:

(1) Knowingly to use, alter, or transfer food stamp coupons or authorizations to purchase food stamp coupons in any manner not authorized by law;

(2) Knowingly to possess food stamp coupons or authorizations to purchase food stamp coupons when he or she is not authorized by law to possess them;

(3) Knowingly to possess or redeem food stamp coupons or benefits when he or she is not authorized by law to possess or redeem them; or

(4) Knowingly to use or redeem food stamp coupons or benefits in any manner or for purposes not authorized by law.

(c)(1) Any person who obtains any payment of public assistance to which he is not entitled or in excess of that to which he is entitled shall be liable to the state for the amount of such overpayment.

(2) Any person who intentionally, with knowledge of the fraud, aids or abets any recipient of public assistance in obtaining or attempting to obtain any payment of public assistance to which the recipient is not entitled or a payment in excess of that to which he is entitled shall also be liable to the state for the amount of such payment.

(3) Any person who receives any payment of public assistance to which he is not entitled or in excess of that to which he is entitled shall be liable to the state for the amount of such overpayment.

(4) Subject to the limitations provided in this paragraph, the amount of such overpayment may be recovered by civil action and, if the person receiving such overpayment continues on assistance, by proportionate reduction of future public assistance grants, in accordance with regulations of the board which shall conform to the federal Social Security Act and federal regulations promulgated pursuant thereto, until the excess amount has been paid. In any case in which, under this subsection, a person is liable to repay any sum, such sum may be collected without interest by civil action brought in the name of the department. Any repayment required by this subsection may be waived by the department, and the method of repayment, if any, including recoupments from current assistance grants, shall be determined by the department. Recoupment may be initiated without regard to whether the department has obtained a judgment in a civil action but shall not be initiated prior to notice and an opportunity for a hearing in accordance with this article. The department shall make such waivers and determinations of repayment and the manner of repayment in accordance with regulations of the board which shall conform to the federal Social Security Act and the federal regulations promulgated pursuant thereto.

(d) Any felony offense under this Code section may be prosecuted by accusation as provided in Code Section 17-7-70.1.

(e)(1) Prior to the filing of an accusation or the return of an indictment, a prosecuting attorney may defer further prosecution of such accusation or indictment and shall have the authority to enter into a consent agreement with the individual in which such individual admits to any overpayment, consents to disqualification for such period of time as is or may hereafter be provided by law, and agrees to repay, as restitution, such overpayment. Such agreement may provide for a lump sum repayment, installment payments, formula reduction of benefits, or any combination thereof. Such agreement

shall toll the running of the statute of limitations for such offense for the period of the agreement. A consent agreement entered into in accordance with this subsection shall not constitute a criminal charge.

(2) Any such agreement shall be filed in the criminal docket of the court having jurisdiction over the violation of this Code section without the necessity of the state filing an accusation or an indictment being returned by a grand jury. The clerk shall enter upon the docket "CONSENT AGREEMENT NOT A CRIMINAL CHARGE."

(3) Upon successful completion of the terms and conditions of the consent agreement, criminal prosecution of the individual for such offense shall be barred; provided, however, that nothing in this paragraph shall prohibit the state from introducing evidence of such offense as a similar transaction in any subsequent prosecution or for the purpose of impeachment. The successful completion of the terms and conditions of the agreement shall not be considered a criminal conviction.

(4) If the individual fails to comply with the terms of such consent agreement, the state may proceed with a criminal prosecution. (Ga. L. 1965, p. 385, § 13; Ga. L. 1973, p. 183, § 1; Ga. L. 1975, p. 477, § 1; Ga. L. 1976, p. 1490, § 1; Ga. L. 1978, p. 994, § 1; Ga. L. 1978, p. 1964, § 1; Ga. L. 1989, p. 466, § 1; Ga. L. 1996, p. 1517, §§ 1, 1.2; Ga. L. 1997, p. 1021, § 3; Ga. L. 2015, p. 519, § 4-1/HB 328.)

The 2015 amendment, effective July 1, 2015, in subsection (a), substituted "he or she" for "he" in paragraphs (1) and (2), and, in the undesignated language at the end of subsection (a), substituted "$1,500.00" for "$500.00" and inserted the second occurrence of "(Medicaid)".

49-4-20. Drug test required for applicants and recipients of certain government benefits; penalties for violation; reapplication; confidentiality of records.

(a) As used in this Code section, the term "established drug test" means the collection and testing of bodily fluids administered in a manner equivalent to that required by the Mandatory Guidelines for Federal Workplace Drug Testing Programs established by the United States Department of Health and Human Services or other professionally valid procedures approved by the department; provided, however, that where possible and practicable, a swab test shall be used in lieu of a urinalysis.

(b) The department shall adopt rules and regulations for an established drug test that includes the following:

(1) Which illegal drugs will be the subject of testing;

(2) Methods for assuring minimal privacy intrusions during collection of body fluid specimens for such testing;

(3) Methods for assuring proper storage, transportation, and handling of such specimens in order to ensure the integrity of the testing process;

(4) The identity of those persons entitled to the results of such tests and methods for ensuring that only authorized persons are given access to such results;

(5) A list of laboratories qualified to conduct established drug tests;

(6) A list of approved substance abuse treatment providers;

(7) Procedures for persons undergoing drug testing prior to the collection of body fluid specimens for such testing, so as to provide information regarding the use of any drug pursuant to a medical prescription or as otherwise authorized by law which may affect the results of such test; and

(8) A requirement that any applicant who demonstrates proof of active and current Medicaid benefits shall pay a drug screening application fee of no more than $17.00, and no authorized test examiner shall conduct a drug test if an applicant demonstrates active and current Medicaid benefits unless the applicant presents a receipt proving that he or she has paid the required drug screening application fee. Eligible applicants who do not have active and current Medicaid benefits shall be responsible for paying the full cost of administering the drug test upon presentation to an authorized examiner.

(c)(1) The department shall require a drug test consistent with subsection (b) of this Code section to screen an applicant or recipient of food stamps at any time a reasonable suspicion exists that such applicant or recipient is using an illegal drug. The department may use any information obtained by the department to determine whether such reasonable suspicion exists, including, but not limited to:

(A) An applicant's or recipient's demeanor;

(B) Missed appointments and arrest or other police records;

(C) Previous employment or application for employment in an occupation or industry that regularly conducts drug screening; and

(D) Termination from previous employment due to unlawful use of a controlled substance or controlled substance analog or prior drug screening records of the applicant or recipient indicating unlawful use of a controlled substance or controlled substance analog.

(2) The cost of drug testing shall be the responsibility of the individual tested, provided that the individual does not submit proof of active and current Medicaid benefits to subsidize the cost of such drug testing pursuant to paragraph (8) of subsection (b) of this Code section. No assistance payment shall be delayed because of the requirements of this Code section, and any payments made prior to the department's receipt of a test result showing a failure shall be recoverable.

(d) Any recipient of food stamps who tests positive for controlled substances as a result of a drug test required under this Code section shall be ineligible to receive food stamps as follows:

(1) For a first positive result, the recipient shall be ineligible for food stamps for one month and until he or she tests negative in a retest;

(2) For a second positive result, the recipient shall be ineligible for food stamps for three months and until he or she tests negative in a retest; and

(3) For a third and each subsequent positive result, the recipient shall be ineligible for food stamps for one year and until he or she tests negative in a retest unless the individual meets the requirements of subsection (f) of this Code section.

(e) The department shall:

(1) Provide notice of possible drug testing based on reasonable suspicion to each individual at the time of application. Dependent children under the age of 18 shall be exempt from the drug testing requirement;

(2) Advise each individual to be tested, before the test is conducted, that he or she may, but is not required to, advise the agent administering the test of any prescription or over the counter medication he or she is taking;

(3) Require each individual to be tested to sign a written acknowledgment that he or she has received and understands the notice and advice provided under paragraphs (1) and (2) of this subsection;

(4) Assure each individual being tested a reasonable degree of dignity while producing and submitting a sample for drug testing, consistent with the state's need to ensure the reliability of the sample;

(5) Specify circumstances under which an individual who fails a drug test has the right to take one or more additional tests;

(6) Inform an individual who tests positive for a controlled substance and is deemed ineligible for food stamps for one year pursuant

to paragraph (3) of subsection (d) of this Code section that the individual may reapply for food stamps six months after the date of the positive drug test if he or she meets the requirements of subsection (f) of this Code section; and

(7) Provide any individual who tests positive with a list of substance abuse treatment providers approved by the department which are available in the area in which he or she resides. Neither the department nor the state shall be responsible for providing or paying for substance abuse treatment.

(f) An individual who tests positive for an illegal drug and is denied food stamps for one year may reapply for food stamps after six months if the individual can document the successful completion of a substance abuse treatment program offered by a provider approved by the department. The cost of any drug testing provided under this Code section and substance abuse treatment shall be the responsibility of the individual being tested and receiving treatment. An individual who fails a drug test administered pursuant to subsection (c) of this Code section may reapply for food stamps under this subsection only once.

(g) If a parent is deemed ineligible for food stamps as a result of failing a drug test conducted under this Code section, the parent may choose to designate another individual to receive food stamps for the parent's minor child. The designated individual must be an immediate family member or, if an immediate family member is not available or the family member declines the option, another individual approved by the department. The designated individual shall be subject to possible drug testing based on a reasonable suspicion. If the designated individual tests positive for controlled substances, he or she shall be ineligible to receive benefits on behalf of the child.

(h) The results of any drug test performed according to this Code section shall not be subject to disclosure under Article 4 of Chapter 18 of Title 50, relating to inspection of public records. Such results shall not be used as a part of a criminal investigation or criminal prosecution. Such results shall not be used in a civil action or otherwise disclosed to any person or entity without the express written consent of the person tested or his or her heirs or legal representative. All such records shall be destroyed and deleted five years after the date of the test.

(i) No testing shall be required by the provisions of this Code section for any person whom the department determines is significantly hindered, because of a physical or mental handicap or developmental disability, from doing so or for any person enrolled in an enhanced primary care case management program operated by the Department of Community Health, Division of Medical Assistance to serve frail elderly and disabled beneficiaries to improve the health outcomes of persons

with chronic health conditions by linking primary medical care with home and community based services. In addition, no testing shall be required by the provisions of this Code section for any individuals receiving or on a waiting list for long-term services and supports through a non-Medicaid home and community based services program or for any individual residing in a facility such as a nursing home, personal care home, assisted living community, intermediate care facility for the intellectually or developmentally disabled, community living arrangement, or host home.

(j) The department shall adopt rules to implement this Code section. (Code 1981, § 49-4-20, enacted by Ga. L. 2014, p. 844, § 1/HB 772.)

Effective date. — This Code section became effective July 1, 2014.

Cross references. — Drug-free workplace programs, § 34-9-410 et seq.

Law reviews. — For article on the 2014 enactment of this Code section, see 31 Ga. St. U.L. Rev. 205 (2014).

49-4-21. (Effective January 1, 2016) Photo requirement on electronic benefits transfer cards for food stamps.

(a) The department shall require that all electronic benefits transfer cards which include food stamp benefits contain a photograph of one or more members of a household who are authorized to use such food stamp benefits. The department is authorized to promulgate regulations necessary to implement the provisions of this Code section.

(b) This Code section shall become effective on January 1, 2016. (Code 1981, § 49-4-21, enacted by Ga. L. 2014, p. 844, § 1/HB 772.)

Effective date. — This Code section becomes effective January 1, 2016.

Law reviews. — For article on the 2014 enactment of this Code section, see 31 Ga. St. U.L. Rev. 205 (2014).

ARTICLE 7

MEDICAL ASSISTANCE GENERALLY

49-4-142.2. Expansion of Medicaid eligibility through an increase in the income threshold.

On and after July 1, 2014, neither the department, the board, nor any other representative of the state shall expand Medicaid eligibility under this article through an increase in the income threshold without prior legislative approval; provided, however, that this shall not apply to any increase resulting from a cost-of-living increase in the federal poverty level. The legislative approval required under this Code section shall be by Act of the General Assembly or the adoption of a joint

resolution of the General Assembly. (Code 1981, § 49-4-142.2, enacted by Ga. L. 2014, p. 293, § 2/HB 990.)

Effective date. — This Code section became effective July 1, 2014.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2014, "July 1, 2014" was substituted for "the effective date of this Code section" at the beginning of the Code section.

Editor's notes. — Ga. L. 2014, p. 293, § 1/HB 990, not codified by the General Assembly, provides that: "WHEREAS, the General Assembly is constitutionally mandated to balance the Georgia state budget through the annual appropriations process; and

"WHEREAS, the Medicaid program comprises one of the largest expenditures of state funds in the annual budget; and

"WHEREAS, any decision to increase the income threshold for eligibility for the Medicaid entitlement program in Georgia must be carefully considered within the context of the state's responsibility to fund other critical state services, including education, infrastructure, and public safety; and

"WHEREAS, Governor Nathan Deal has demonstrated fiscal responsibility throughout his first term in office; and

"WHEREAS, Governor Deal has recently declined to expand Medicaid eligibility through an increase in the income threshold in Georgia's Medicaid program despite efforts by the federal government to compel states to expand this entitlement program through provisions of the Affordable Care Act; and

"WHEREAS, expanding Medicaid eligibility by increasing the income threshold for the Medicaid entitlement program would dramatically increase the number of Georgians receiving public assistance that otherwise do not qualify for Medicaid benefits by meeting low income program requirements for aged, blind, and disabled individuals; for families or children age 18 and under; for aged, blind, and disabled individuals receiving nursing home care; for individuals receiving hospice care; for pregnant women; or for individuals with breast or cervical cancer; or by meeting other program requirements for children in foster care or adopted from foster care or for children with disabilities receiving services under a federal Deeming waiver; and

"WHEREAS, in support of Governor Deal's stance against this effort to oblige states to expand the income threshold for Medicaid benefits and, in an effort to assure any similar efforts by the federal government are seriously evaluated in the future, the General Assembly determines it is essential that a potential expansion of eligibility for Medicaid be thoroughly debated and voted upon by the legislature."

Law reviews. — For article on the 2014 enactment of this Code section, see 31 Ga. St. U.L. Rev. 191 (2014).

49-4-146.1. Unlawful acts; violations and penalties; recovery of excess amounts; termination and reinstatement of providers; duty of department to identify and investigate violations; notifications; authorization to obtain income eligibility verification.

JUDICIAL DECISIONS

Statute not vague. — O.C.G.A. § 49-4-146.1(b)(2), as applied, was not unconstitutionally vague as the procedures for which one would not be entitled to payment through the program were listed in the Medicaid manual, which, in conjunction with the statute, provided the defendant with appropriate notice as required by law. Malloy v. State, 293 Ga. 350, 744 S.E.2d 778 (2013).

Jury instructions. — In defendant's trial for Medicaid fraud in violation of O.C.G.A. § 49-4-146.1(b)(1), the trial court did not err in reading the entire

statute to the jury, although the defendant was only charged with fraud by engaging in a fraudulent scheme and device, because the indictment was read to the jury and sent out with the jury, and the trial court noted that the jury was limited to convicting the defendant if the defendant acted as charged. Wright v. State, 327 Ga. App. 451, 757 S.E.2d 890 (2014).

49-4-146.3. Civil forfeiture of property and proceeds obtained through Medicaid fraud.

(a) As used in this Code section, the term:

(1) "Civil forfeiture proceeding" shall have the same meaning as set forth in Code Section 9-16-2.

(2) "Medicaid fraud" means:

(A) A violation of Code Section 49-4-146.1; or

(B) A violation relating to the obtaining of medical assistance benefits or payments under this article of any provision of:

(i) Chapter 8 of Title 16, relating to offenses involving theft;

(ii) Code Section 16-10-20, relating to false statements and writings, concealment of facts, and fraudulent documents in matters within jurisdiction of state or political subdivisions; or

(iii) Code Section 16-10-21, relating to conspiracy to defraud the state or its political subdivisions.

(3) "Proceeds" shall have the same meaning as set forth in Code Section 9-16-2.

(4) "Property" shall have the same meaning as set forth in Code Section 9-16-2.

(b) Any property which is directly or indirectly obtained by a person or entity through or as a result of Medicaid fraud in the provision of services or equipment under this article and any proceeds shall be subject to civil forfeiture proceedings in accordance with Chapter 16 of Title 9. This Code section shall not apply to cases involving alleged fraud by Medicaid recipients in obtaining medical assistance benefits. (Code 1981, § 49-4-146.3, enacted by Ga. L. 1997, p. 1596, § 3; Ga. L. 1998, p. 128, § 49; Ga. L. 1998, p. 664, § 2; Ga. L. 1999, p. 296, § 24; Ga. L. 2000, p. 1225, § 7; Ga. L. 2000, p. 1589, § 3; Ga. L. 2001, p. 362, § 36; Ga. L. 2015, p. 693, § 3-29/HB 233.)

The 2015 amendment, effective July 1, 2015, rewrote this Code section. See editor's notes for applicability.

Editor's notes. — Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

49-4-153. Administrative hearings and appeals; judicial review; contested cases involving imposition of remedial or punitive measure against nursing facility.

JUDICIAL DECISIONS

Exhaustion of administrative remedies.

Under the Georgia Medical Assistance Act of 1977, O.C.G.A. § 49-4-140 et seq. (including O.C.G.A. § 49-4-153(b)(1), (b)(2)(A)), the regulations, and the policy and procedure manuals, health care providers were entitled to written notification from the Georgia Department of Behavioral Health and Developmental Disabilities and the Georgia Department of Community Health of the proposed action to deny or reduce the amount of the providers' reimbursement. United Cerebral Palsy of Ga. v. Ga. Dep't of Behavioral Health & Developmental Disabilities, 331 Ga. App. 616, 771 S.E.2d 251 (2015).

ARTICLE 7B

FALSE MEDICAID CLAIMS

49-4-168.1. Civil penalties for false or fraudulent Medicaid claims.

(a) Any person who:

(1) Knowingly presents or causes to be presented to the Georgia Medicaid program a false or fraudulent claim for payment or approval;

(2) Knowingly makes, uses, or causes to be made or used a false record or statement material to a false or fraudulent claim;

(3) Conspires to commit a violation of paragraph (1), (2), (4), (5), (6), or (7) of this subsection;

(4) Has possession, custody, or control of property or money used or to be used by the Georgia Medicaid program and knowingly delivers, or causes to be delivered, less than all of such property or money;

(5) Is authorized to make or deliver a document certifying receipt of property used, or to be used, by the Georgia Medicaid program and, intending to defraud the Georgia Medicaid program, makes or delivers the receipt without completely knowing that the information on the receipt is true;

(6) Knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Georgia Medicaid program who lawfully may not sell or pledge the property; or

(7) Knowingly makes, uses, or causes to be made or used a false record or statement material to an obligation to pay or transmit

property or money to the Georgia Medicaid program, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit property or money to the Georgia Medicaid program,

shall be liable to the State of Georgia for a civil penalty of not less than $5,500.00 and not more than $11,000.00 for each false or fraudulent claim, plus three times the amount of damages which the Georgia Medicaid program sustains because of the act of such person.

(b) The provisions of subsection (a) of this Code section notwithstanding, if the court finds that:

(1) The person committing the violation of this subsection furnished officials of the Georgia Medicaid program with all information known to such person about the violation within 30 days after the date on which the defendant first obtained the information;

(2) Such person fully cooperated with any government investigation of such violation; and

(3) At the time such person furnished the Georgia Medicaid program with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this article with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation,

the court may assess not more than two times the amount of the actual damages which the Georgia Medicaid program sustained because of the act of such person.

(c) A person violating any provision of subsection (a) of this Code section shall also be liable to this state for all costs of any civil action brought to recover the damages and penalties provided under this article.

(d) As used in this Code section, the term "Georgia Medicaid program" includes any contractor, subcontractor, or agent for the Georgia Medicaid program, including, but not limited to, a managed care program operated, funded, or reimbursed by the Georgia Medicaid program. (Code 1981, § 49-4-168.1, enacted by Ga. L. 2007, p. 355, § 3/HB 551; Ga. L. 2009, p. 8, § 49/SB 46; Ga. L. 2012, p. 127, § 2-1/HB 822; Ga. L. 2014, p. 77, § 1/HB 973.)

The 2014 amendment, effective April 15, 2014, substituted the present provisions of paragraph (a)(3) for the former provisions, which read: "Conspires to defraud the Georgia Medicaid program by getting a false or fraudulent claim allowed or paid" and added subsection (d).

49-4-168.2. Role of Attorney General in pursuing cases; civil actions by private persons; special procedures for civil actions by private persons; limitation on participation; stay of discovery; receipt of proceeds.

(a) The Attorney General shall be authorized to investigate suspected, alleged, and reported violations of this article. If the Attorney General finds that a person has violated or is violating this article, then the Attorney General may bring a civil action against such person under this article.

(b) Subject to the exclusions set forth in this Code section, a civil action under this article may also be brought by a private person. A civil action shall be brought in the name of the State of Georgia. The civil action may be dismissed only if the court and the Attorney General give written consent to the dismissal and state the reasons for consenting to such dismissal.

(c) Where a private person brings a civil action under this article, such person shall follow the following special procedures:

(1) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Attorney General;

(2) The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The purpose of the period under seal shall be to allow the Attorney General to investigate the allegations of the complaint. The Attorney General may elect to intervene and proceed with the civil action within 60 days after it receives both the complaint and the material evidence and information;

(3) The Attorney General may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2) of this subsection. Any such motions may be supported by affidavits or other submissions in camera;

(4) Before the expiration of the 60 day period or any extensions obtained under paragraph (3) of this subsection, the Attorney General shall:

(A) Proceed with the civil action, in which case the civil action shall be conducted by the Attorney General; or

(B) Notify the court that it declines to take over the civil action, in which case the person bringing the civil action shall have the right to proceed with the civil action;

(5) The defendant shall not be required to respond to any complaint filed under this Code section until 30 days after the complaint is unsealed and served upon the defendant; and

(6) When a person brings a civil action under this subsection, no person other than the Attorney General may intervene or bring a related civil action based on the facts underlying the pending civil action.

(d)(1) If the Attorney General elects to intervene and proceed with the civil action, he or she shall have the primary responsibility for prosecuting the civil action and shall not be bound by an act of the person bringing such civil action. Such person shall have the right to continue as a party to the civil action, subject to the limitations set forth in this subsection.

(2) The Attorney General may dismiss the civil action, notwithstanding the objections of the person initiating the civil action, if the person has been notified by the Attorney General of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.

(3) The Attorney General may settle the civil action with the defendant notwithstanding the objections of the person initiating the civil action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

(4) Upon a showing by the Attorney General that unrestricted participation during the course of the litigation by the person initiating the civil action would interfere with or unduly delay the Attorney General's litigation of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as:

(A) Limiting the number of witnesses the person may call;

(B) Limiting the length of the testimony of such witnesses;

(C) Limiting the person's cross-examination of witnesses; or

(D) Otherwise limiting the participation by the person in the litigation.

(e) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the civil action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

(f) If the Attorney General elects not to proceed with the civil action, the person who initiated the civil action shall have the right to conduct the civil action. If the Attorney General so requests, he or she shall be served with copies of all pleadings filed in the civil action and shall be

supplied with copies of all deposition transcripts. When a person proceeds with the civil action, the court may nevertheless permit the Attorney General to intervene at a later date for any purpose, including, but not limited to, dismissal of the civil action notwithstanding the objections of the person initiating the civil action if such person has been notified by the Attorney General of the filing of such motion and the court has provided such person with an opportunity for a hearing on such motion.

(g) Whether or not the Attorney General proceeds with the civil action, upon a showing by the Attorney General that certain actions of discovery by the person initiating the civil action would interfere with the Attorney General's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 60 days. Such a showing shall be conducted in camera. The court may extend the 60 day period upon a further showing in camera that the Attorney General has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(h) Notwithstanding subsections (b) and (c) of this Code section, the Attorney General may elect to pursue this state's claim through any alternate remedy available to the Attorney General, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the civil action shall have the same rights in such proceeding as such person would have had if the civil action had continued under this Code section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to a civil action under this Code section. For purposes of this subsection, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the State of Georgia, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

(i)(1) If the Attorney General proceeds with a civil action brought by a private person under subsection (b) of this Code section, such person shall, subject to the second sentence of this paragraph, receive at least 15 percent but not more than 25 percent of the proceeds of the civil action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the civil action. Where the civil action is one which the court finds to be based primarily on disclosures of specific information, other than information provided by the person bringing the civil action, relating to allegations or transactions in a criminal, civil, or administrative hearing, in a legislative, administrative, or Attorney General hear-

ing, audit, or investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than 10 percent of the proceeds, taking into account the significance of the information and the role of the person bringing such civil action in advancing the case to litigation. Any payment to a person under the first or second sentence of this paragraph shall be made from the proceeds. The remaining proceeds shall be payable to the State of Georgia, by and through the Department of Community Health, for the purposes of operating, sustaining, protecting, and administering the Georgia Medicaid program. Any such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorney's fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(2) If the Attorney General does not proceed with a civil action under this Code section, the person bringing the civil action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. Such amount shall be not less than 25 percent and not more than 30 percent of the proceeds of the civil action or settlement and shall be paid out of such proceeds. The remaining proceeds shall be payable to the State of Georgia, by and through the Department of Community Health, for the purposes of operating, sustaining, protecting, and administering the Georgia Medicaid program. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorney's fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(3) Whether or not the Attorney General proceeds with the civil action, if the court finds that the civil action was brought by a person who planned and initiated the violation of Code Section 49-4-168.1 upon which the civil action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the civil action which the person would otherwise receive under paragraph (1) or (2) of this subsection, taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the civil action is convicted of criminal conduct arising from his or her role in the violation of Code Section 49-4-168.1, such person shall be dismissed from the civil action and shall not receive any share of the proceeds of the civil action. Such dismissal shall not prejudice the right of the State of Georgia to continue the civil action, represented by the Attorney General.

(4) If the Attorney General does not proceed with the civil action and the person bringing the civil action conducts the civil action, the

court may award to the defendant its reasonable attorney's fees and expenses against the person bringing the civil action if the defendant prevails in the civil action and the court finds that the claim of the person bringing the civil action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

(5) The State of Georgia shall not be liable for expenses which a private person incurs in bringing a civil action under this article.

(j) In no event may a person bring a civil action under this article which is based upon allegations or transactions which are the subject of a civil or administrative proceeding to which the State of Georgia is already party.

(k) No civil action may be brought under this article with respect to any claim relating to the assessment, payment, nonpayment, refund, or collection of taxes pursuant to any provisions of Title 48.

(l)(1) As used in this subsection, the term "original source" means an individual who:

(A) Prior to public disclosure, has voluntarily disclosed to the Attorney General the information on which allegations or transactions in a claim are based; or

(B) Has knowledge that is independent of and materially adds to publicly disclosed allegations or transactions and who has voluntarily provided such information to the Attorney General before filing a civil action under this Code section.

(2) The court shall dismiss a civil action or claim under this Code section, unless opposed by the Attorney General, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed:

(A) In any criminal, civil, or administrative hearing in which the State of Georgia or its employee, agent, or contractor is a party;

(B) In a legislative or other Georgia report, hearing, audit, or investigation; or

(C) From the news media,

unless the civil action is brought by the Attorney General or the person bringing the civil action is an original source of the information. (Code 1981, § 49-4-168.2, enacted by Ga. L. 2007, p. 355, § 3/HB 551; Ga. L. 2009, p. 8, § 49/SB 46; Ga. L. 2012, p. 127, § 2-1/HB 822; Ga. L. 2013, p. 141, § 49/HB 79; Ga. L. 2014, p. 77, § 2/HB 973.)

The 2014 amendment, effective April 15, 2014, substituted "legislative or other Georgia" for "congressional, legislative, or other state or federal" in subparagraph (l)(2)(B).

ARTICLE 9

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

49-4-193. Drug test required for certain TANF applicants or recipients; ineligibility for benefits based upon positive tests; drug treatment; impact of drug use by parents on children; confidentiality; exceptions.

(a) As used in this Code section, the term "established drug test" means the collection and testing of bodily fluids administered in a manner equivalent to that required by the Mandatory Guidelines for Federal Workplace Drug Testing Programs established by the United States Department of Health and Human Services or other professionally valid procedures approved by the department; provided, however, that where possible and practicable, a swab test shall be used in lieu of a urinalysis.

(b) The department shall adopt rules and regulations for an established drug test which shall include the following:

(1) Which illegal drugs will be the subject of testing;

(2) Methods for assuring minimal privacy intrusions during collection of body fluid specimens for such testing;

(3) Methods for assuring proper storage, transportation, and handling of such specimens in order to ensure the integrity of the testing process;

(4) The identity of those persons entitled to the results of such tests and methods for ensuring that only authorized persons are given access to such results;

(5) A list of laboratories qualified to conduct established drug tests;

(6) A list of approved substance abuse treatment providers;

(7) Procedures for persons undergoing drug testing, prior to the collection of body fluid specimens for such testing, to provide information regarding use of any drug pursuant to a medical prescription or as otherwise authorized by law which may affect the results of such test; and

(8) A requirement that any applicant who demonstrates proof of active and current Medicaid benefits shall pay a drug screening application fee of no more than $17.00, and no authorized test

examiner shall conduct a drug test if an applicant demonstrates active and current Medicaid benefits unless the applicant presents a receipt proving that he or she has paid the required drug screening application fee. Eligible applicants who do not have active and current Medicaid benefits shall be responsible for paying the full cost of administering the drug test upon presentation to an authorized examiner.

(c)(1) The department shall require a drug test consistent with subsection (b) of this Code section to screen an applicant or recipient at any time a reasonable suspicion exists that such applicant or recipient is using an illegal drug. The department may use any information obtained by the department to determine whether such reasonable suspicion exists, including, but not limited to:

(A) An applicant's or recipient's demeanor;

(B) Missed appointments and arrest or other police records;

(C) Previous employment or application for employment in an occupation or industry that regularly conducts drug screening; and

(D) Termination from previous employment due to unlawful use of a controlled substance or controlled substance analog or prior drug screening records of the applicant or recipient indicating unlawful use of a controlled substance or controlled substance analog.

(2) The cost of drug testing shall be the responsibility of the individual tested, provided that the individual does not submit proof of active and current Medicaid benefits to subsidize the cost of such drug testing pursuant to paragraph (8) of subsection (b) of this Code section. No assistance payment shall be delayed because of the requirements of this Code section, and any payments made prior to the department's receipt of a test result showing a failure shall be recoverable.

(d) Any recipient of cash assistance under this article who tests positive for controlled substances as a result of a drug test required under this Code section shall be ineligible to receive TANF benefits as follows:

(1) For a first positive result, the recipient shall be ineligible for TANF benefits for one month and until he or she tests negative in a retest;

(2) For a second positive result, the recipient shall be ineligible for TANF benefits for three months and until he or she tests negative in a retest; and

(3) For a third and each subsequent positive result, the recipient shall be ineligible for TANF benefits for one year and until he or she

tests negative in a retest unless the individual meets the requirements of subsection (f) of this Code section.

(e) The department shall:

(1) Provide notice of possible drug testing based on reasonable suspicion to each individual at the time of application. Dependent children under the age of 18 are exempt from the drug testing requirement;

(2) Advise each individual to be tested, before the test is conducted, that he or she may, but is not required to, advise the agent administering the test of any prescription or over the counter medication he or she is taking;

(3) Require each individual to be tested to sign a written acknowledgment that he or she has received and understood the notice and advice provided under paragraphs (1) and (2) of this subsection;

(4) Assure each individual being tested a reasonable degree of dignity while producing and submitting a sample for drug testing, consistent with the state's need to ensure the reliability of the sample;

(5) Specify circumstances under which an individual who fails a drug test has the right to take one or more additional tests;

(6) Inform an individual who tests positive for a controlled substance and is deemed ineligible for TANF benefits for one year pursuant to paragraph (3) of subsection (d) of this Code section that the individual may reapply for those benefits six months after the date of the positive drug test if he or she meets the requirements of subsection (f) of this Code section; and

(7) Provide any individual who tests positive with a list of substance abuse treatment providers approved by the department which are available in the area in which he or she resides. Neither the department nor the state shall be responsible for providing or paying for substance abuse treatment.

(f) An individual who tests positive for an illegal drug and is denied TANF benefits for one year may reapply for TANF benefits after six months if the individual can document the successful completion of a substance abuse treatment program offered by a provider approved by the department. The cost of any drug testing provided under this Code section and substance abuse treatment shall be the responsibility of the individual being tested and receiving treatment. An individual who fails the drug test required under subsection (c) of this Code section may reapply for TANF benefits under this subsection only once.

(g) If a parent is deemed ineligible for TANF benefits as a result of failing a drug test conducted under this Code section:

(1) The dependent child's eligibility for TANF benefits shall not be affected;

(2) An appropriate protective payee shall be designated to receive benefits on behalf of the child; and

(3) The parent may choose to designate another individual to receive benefits for the parent's minor child. The designated individual must be an immediate family member or, if an immediate family member is not available or the family member declines the option, another individual approved by the department. The designated individual shall be subject to possible drug testing based on a reasonable suspicion. If the designated individual tests positive for controlled substances, he or she shall be ineligible to receive benefits on behalf of the child.

(h) The results of any drug test done according to this Code section shall not be subject to disclosure under Article 4 of Chapter 18 of Title 50, relating to inspection of public records. Such results shall not be used as a part of a criminal investigation or criminal prosecution. Such results shall not be used in a civil action or otherwise disclosed to any person or entity without the express written consent of the person tested or his or her heirs or legal representative. All such records shall be destroyed and deleted five years after the date of the test.

(i) No testing shall be required by the provisions of this Code section for any person whom the department determines is significantly hindered, because of a physical or mental handicap or developmental disability, from doing so or for any person enrolled in an enhanced primary care case management program operated by the Department of Community Health, Division of Medical Assistance to serve frail elderly and disabled beneficiaries to improve the health outcomes of persons with chronic health conditions by linking primary medical care with home and community based services. In addition, no testing shall be required by the provisions of this Code section for any individuals receiving or on a waiting list for long-term services and supports through a non-Medicaid home and community based services program or for any individual residing in a facility such as a nursing home, personal care home, assisted living community, intermediate care facility for the intellectually or developmentally disabled, community living arrangement, or host home.

(j) The department shall adopt rules to implement this Code section. (Code 1981, § 49-4-193, enacted by Ga. L. 2012, p. 91, § 3/HB 861; Ga. L. 2014, p. 844, § 2/HB 772; Ga. L. 2014, p. 866, § 49/SB 340; Ga. L. 2015, p. 385, § 4-13/HB 252.)

The 2014 amendments. — The first 2014 amendment, effective July 1, 2014, substituted "established by the United States Department of Health and Human

Services" for "(53 C.F.R. 11979, et seq., as amended)" in the middle of subsection (a); rewrote subsections (b), (c), and (e); deleted the former second and third sentences of subsection (f), which read: "An individual who has met the requirements of this subsection and reapplies for TANF benefits shall also pass an initial drug test and meet the requirements of subsection (c) of this Code section. Any drug test conducted while the individual is undergoing substance abuse treatment shall meet the requirements of subsection (b) of this Code section."; and substituted "shall be subject to possible drug testing based on a reasonable suspicion" for "shall also undergo drug testing before being approved to receive benefits on behalf of the child" in the third sentence of paragraph (g)(3). The second 2014 amendment, effective April 29, 2014, part of an Act to revise, modernize, and correct the Code, substituted "Mandatory Guidelines for Federal Workplace Drug Testing Programs" for "Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 C.F.R. 11979, et seq., as amended)" in subsection (a).

The 2015 amendment, effective July 1, 2015, substituted "intellectually or developmentally disabled" for "mentally retarded" in subsection (i).

Editor's notes. — Ga. L. 2015, p. 385, § 1-1/HB 252, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'J. Calvin Hill, Jr., Act.'"

Law reviews. — For article on the 2014 amendment of this Code section, see 31 Ga. St. U.L. Rev. 205 (2014).

CHAPTER 4A

DEPARTMENT OF JUVENILE JUSTICE

Sec.

49-4A-2. Board of Juvenile Justice created; appointments; terms; vacancies; chairperson; per diem and expenses; responsibilities duties.

(a)(1) There is created a Board of Juvenile Justice which shall establish the general policy to be followed by the Department of Juvenile Justice created in this chapter. The Board of Juvenile Justice shall be the successor entity to the Board of Children and Youth Services and the change is intended to be one of name only. The board shall consist of 15 members, with at least one but not more than two from each congressional district in the state, appointed by the Governor and confirmed by the Senate. The Governor shall make such appointments with a view toward achieving minority represen-

tation, representation of women, and equitable geographic representation on the board.

(2) The Governor shall designate the initial terms of the members of the board as follows: three members shall be appointed for one year; three members shall be appointed for two years; three members shall be appointed for three years; three members shall be appointed for four years; and three members shall be appointed for five years. Thereafter, all succeeding appointments shall be for five-year terms from the expiration of the previous term.

(3) Vacancies in office shall be filled by appointment by the Governor in the same manner as the appointment to the position on the board which becomes vacant, and the appointment shall be submitted to the Senate for confirmation at the next session of the General Assembly. An appointment to fill a vacancy, other than by expiration of a term of office, shall be for the balance of the unexpired term.

(4) There shall be a chairperson of the board, elected by and from the membership of the board, who shall be the presiding officer of the board.

(5) The members of the board shall receive per diem and expenses as shall be set and approved by the Office of Planning and Budget and in conformance with rates and allowances set for members of other state boards.

(b) The board shall:

(1) Provide leadership in developing programs to successfully rehabilitate delinquent children committed to the state's custody;

(2) Provide technical assistance to private and public entities for prevention programs for children at risk;

(3) Ensure that detention assessment, risk assessment, and risk and needs assessment instruments that are utilized by intake personnel and courts are developed in consultation with the Governor's Office for Children and Families, the Criminal Justice Coordinating Council, and the Council of Juvenile Court Judges and ensure that such instruments are validated at least every five years;

(4) Adopt rules and regulations governing the management and treatment of children committed to the department to ensure that evidence based programs or practices, including the use of a risk and needs assessment and any other method the board deems appropriate, guide decisions related to placing a committed child in a facility or into the community, preparing a child's release into the community, and managing children probationers in the community; and

(5) Require the department to collect and analyze data and performance outcomes, including, but not limited to, data collected and maintained pursuant to subsection (n) of Code Section 49-4A-8 and prepare an annual report regarding such information which shall be submitted to the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, and the chairpersons of the House Committee on Judiciary Non-civil and the Senate Judiciary Committee.

(c) The board shall perform duties required of it by this chapter and shall, in addition thereto, be responsible for promulgation of all rules and regulations not in conflict with this chapter that may be necessary and appropriate to the administration of the department, to the accomplishment of the purposes of this chapter, and to the performance of the duties and functions of the department as set forth in this chapter.

(d) The board shall establish rules and regulations for the government, operation, and maintenance of all training schools, facilities, and institutions now or hereafter under the jurisdiction and control of the department, bearing in mind at all times that the purpose for existence and operation of such schools, facilities, and institutions and all activities carried on therein shall be to carry out the rehabilitative program provided for by this chapter and to restore and build up the self-respect and self-reliance of children and youths lodged therein so as to qualify and equip them for good citizenship and honorable employment. (Code 1981, § 49-4A-2, enacted by Ga. L. 1992, p. 1983, § 24; Ga. L. 1997, p. 1453, § 5; Ga. L. 2013, p. 294, § 3-2/HB 242; Ga. L. 2014, p. 866, § 49/SB 340; Ga. L. 2015, p. 890, § 6/HB 263.)

The 2014 amendment, effective April 29, 2014, part of an Act to revise, modernize, and correct the Code, substituted "Senate Judiciary Committee" for "Senate State Judiciary Committee" at the end of paragraph (b)(5).

The 2015 amendment, effective July 1, 2015, inserted ", the Criminal Justice Coordinating Council," in paragraph (b)(3).

49-4A-7. Powers and duties of department.

(a) The department shall be authorized to:

(1) Accept for detention in a juvenile detention facility any child who is committed to the department under Article 6 of Chapter 11 of Title 15;

(2) Provide probation and other court services for children pursuant to a request from a court under Article 6 of Chapter 11 of Title 15;

(3) Provide casework services and care or payment of maintenance costs for children who have run away from their home communities

within this state or from their home communities in this state to another state or from their home communities in another state to this state; pay the costs of returning such runaway children to their home communities; and provide such services, care, or costs for runaway children as may be required under Chapter 4B of Title 49;

(4) Enter into contracts and cooperative agreements with federal, state, county, and municipal governments and their agencies and departments; enter into contracts with public and private institutions and agencies of this and other states; enter into leases with private vendors selected to operate programs on behalf of the department which shall run concurrently with the department's service contracts; provided, however, that any such lease shall provide that if the property which is the subject of the lease is sold and conveyed during the term of the lease, such lease shall expire by operation of law 90 days after the closing of such sale and conveyance; and enter into contracts with individuals, as may be necessary or desirable in effectuating the purposes of this chapter; and

(5) Solicit and accept donations, contributions, and gifts and receive, hold, and use grants, devises, and bequests of real, personal, and mixed property on behalf of the state to enable the department to carry out its functions and purposes.

(b) When given legal custody over a child for detention in a juvenile detention facility under court order under Article 6 of Chapter 11 of Title 15, the department shall have:

(1) The right of physical possession of such child;

(2) The right and duty to protect, train, and discipline such child;

(3) The responsibility to provide such child with food, clothing, shelter, and education;

(4) The right to determine in which facility such child shall live and to transfer such child as provided in subsection (b) of Code Section 42-5-52; and

(5) The right and duty to provide or obtain for such child medical, hospital, psychiatric, surgical, or dental care or services as may be considered appropriate and necessary by competent medical authority without securing prior consent of parents or legal guardians.

(c) The board may authorize the commissioner to enter into contracts and agreements provided for in this Code section subject to the approval of the board or may, through appropriate action of the board, delegate such authority to the commissioner; provided, however, that any contract or agreement that provides services to delinquent children shall be a performance based contract that includes financial incentives

or consequences based on the results achieved by the contractor as measured by output, quality, or outcome measures. (Code 1981, § 49-4A-7, enacted by Ga. L. 1992, p. 1983, § 24; Ga. L. 1994, p. 304, § 1; Ga. L. 1995, p. 955, § 1; Ga. L. 1997, p. 1414, § 1; Ga. L. 1998, p. 128, § 49; Ga. L. 2013, p. 294, § 3-7/HB 242; Ga. L. 2014, p. 763, § 3-2/HB 898.)

The 2014 amendment, effective July 1, 2014, substituted "Chapter 4B of Title 49" for "Chapter 3 of Title 39" at the end of paragraph (a)(3).

Law reviews. — For annual survey on administrative law, see 66 Mercer L. Rev. 1 (2014).

49-4A-8. Commitment of delinquent children; procedure; cost; return of mentally ill or developmentally disabled children; escapees; discharge; evidence of commitment; records; restitution.

(a) When the court does not release a delinquent child unconditionally or place him or her on probation or in a suitable public or private institution or agency, the court may commit such child to the department as provided in Article 6 of Chapter 11 of Title 15; provided, however, that no delinquent child shall be committed to the department until the department certifies to the Governor that it has facilities available and personnel ready to assume responsibility for delinquent children.

(b) When the court commits a delinquent child to the department, it may order such child conveyed forthwith to any facility designated by the department or direct that such child be left at liberty until otherwise ordered by the department under such conditions as will ensure his or her availability and submission to any orders of the department. If such delinquent child is ordered conveyed to the department, the court shall assign an officer or other suitable person to convey such child to any facility designated by the department, provided that the person assigned to convey a girl must be female. The cost of conveying such child committed to the department to the facility designated by the department shall be paid by the county from which such child is committed, provided that no compensation shall be allowed beyond the actual and necessary expenses of the party conveying and the child conveyed.

(c) When a court commits a delinquent child to the department, the court shall at once electronically submit a certified copy of the order of commitment to the department, and the court, the juvenile probation officer, the community supervision officer, the prosecuting and police authorities, the school authorities, and other public officials shall make available to the department all pertinent information in their possession pertaining to the case, including, but not limited to, any predispo-

sition investigation report as set forth in Code Section 15-11-590 and any risk assessment. Such reports shall, if the department so requests, be made upon forms furnished by the department or according to an outline provided by the department.

(d)(1) When a delinquent child has been committed to the department, the department shall, under rules and regulations established by the board, forthwith examine and study such child and investigate all pertinent circumstances of his or her life and behavior. The department shall make periodic reexaminations of all such children within its control, except those on release under supervision of the department. Such reexaminations may be made as frequently as the department considers desirable, and every such child shall be reexamined at intervals not exceeding one year. Failure of the department to examine such a child committed to it or to reexamine him or her within one year of a previous examination shall not of itself entitle such child to discharge from control of the department but shall entitle such child to petition the committing court for an order of discharge; and the court shall discharge him or her unless the department, upon due notice, satisfies the court of the necessity of further control.

(2) The department shall keep written records of all examinations and reexaminations, of conclusions based thereon, and of all orders concerning the disposition or treatment of every delinquent child subject to its control. Records maintained by the department pertaining to a delinquent child committed to the department shall not be public records but shall be privileged records and may be disclosed by direction of the commissioner pursuant to federal law regarding disseminating juvenile criminal history records only to those persons having a legitimate interest therein; provided, however, that the commissioner shall permit the Council of Juvenile Court Judges to inspect and copy such records for the purposes of obtaining statistics on juveniles.

(e) Except as provided by subsection (e.1) of this Code section and subsection (c) or (d) of Code Section 15-11-602, when a delinquent child has been committed to the department for detention and a diagnostic study for the purpose of determining the most satisfactory plan for such child's care and treatment has been completed, the department may:

(1) Permit such child liberty under supervision and upon such conditions as the department may believe conducive to acceptable behavior;

(2) Order such child's confinement under such conditions as the department may believe best designed to serve such child's welfare and as may be in the best interest of the public;

(3) Order reconfinement or renewed release as often as conditions indicate to be desirable;

(4) Revoke or modify any order of the department affecting such child, except an order of final discharge, as often as conditions indicate to be desirable; or

(5) Discharge such child from control of the department pursuant to Code Section 15-11-32 and subsection (c) of Code Section 15-11-607 when it is satisfied that such discharge will best serve such child's welfare and the protection of the public.

(e.1)(1) When a child who has been adjudicated for the commission of a class A designated felony act or class B designated felony act as defined in Code Section 15-11-2 is released from confinement or custody of the department, it shall be the responsibility of the department to provide notice to any person who was the victim of such child's acts that such child is being released from confinement or custody.

(2) The department and employees of the department shall not be liable for damages incurred by reason of the department's failure to provide the notice required by paragraph (1) of this subsection.

(3) When a child convicted of a felony offense in a superior court is released from confinement or custody of the department, the department shall provide written notice, including the delinquent act or class A designated felony act or class B designated felony act committed, to the superintendent of the school system in which such child was enrolled or, if the information is known, the school in which such child was enrolled or plans to be enrolled.

(4) The department and employees of the department shall not be liable for damages incurred by reason of the department's failure to provide notice required by paragraph (3) of this subsection.

(f) As a means of correcting the socially harmful tendencies of a delinquent child committed to it, the department may:

(1) Require participation by such child in moral, academic, vocational, physical, and correctional training and activities, and provide such child the opportunity for religious activities where practicable in the institutions under the control and supervision of the department;

(2) Require such modes of life and conduct as may seem best adapted to fit and equip him or her for return to full liberty without danger to the public;

(3) Provide such medical, psychiatric, or casework treatment as is necessary; or

(4) Place him or her, if physically fit, in a park, maintenance camp, or forestry camp or on a ranch owned by the state or by the United States and require any child so housed to perform suitable conservation and maintenance work, provided that the children shall not be exploited and that the dominant purpose of such activities shall be to benefit and rehabilitate the children rather than to make the camps self-sustaining.

(g) When funds are available, the department may:

(1) Establish and operate places for detention and diagnosis of all delinquent children committed to it;

(2) Establish and operate additional treatment and training facilities, including parks, forestry camps, maintenance camps, ranches, and group residences necessary to classify and handle juvenile delinquents of different ages and habits and different mental and physical conditions, according to their needs; and

(3) Establish aftercare supervision to aid children given conditional release to find homes and employment and otherwise to assist them to become reestablished in the community and to lead socially acceptable lives.

(h) Whenever the department finds that any child committed to the department is mentally ill or has a developmental disability, as defined in Code Section 15-11-2, the department shall have the power to return such child to the court of original jurisdiction for appropriate disposition by that court or may, if it so desires, request the court having jurisdiction in the county in which the juvenile detention facility is located to take such action as the condition of the child may require.

(i)(1) A child who has been committed to the department for detention in a juvenile detention facility or who has been otherwise taken into custody and who has escaped therefrom or who has been placed under supervision and broken the conditions thereof may be taken into custody without a warrant by a sheriff, deputy sheriff, constable, police officer, probation officer, or any other officer of this state authorized to serve criminal process upon a written request made by an employee of the department having knowledge of the escape or of the violation of conditions of supervision. Before a child may be taken into custody for violation of the conditions of supervision, such written request shall be reviewed by the commissioner or his or her designee. If the commissioner or his or her designee finds that probable cause exists to believe that such child has violated his or her conditions of supervision, he or she may issue an order directing that such child be picked up and returned to custody.

(2) The commissioner may designate as a peace officer who is authorized to exercise the power of arrest any employee of the

department whose full-time duties include the preservation of public order, the protection of life and property, the detection of crime, or the supervision of delinquent children or children in need of services in its institutions, facilities, or programs, the supervision of delinquent children or children in need of services under intensive supervision in the community, or any employee who is a line supervisor of any such employee. The commissioner also may designate as a peace officer who is authorized to exercise the power of arrest any employee of a person or organization which contracts with the department pertaining to the management, custody, care, and control of delinquent children or children in need of services retained by the person or organization if that employee's full-time duties include the preservation of public order, the protection of life and property, the detection of crime, or the supervision of delinquent children in the department's institutions, facilities, or programs, or any employee who is a line supervisor of such employee. The commissioner may designate one or more employees of the department to investigate and apprehend children who have escaped from a juvenile detention facility or who have broken the conditions of supervision; provided, however, that the employees so designated shall only be those with primary responsibility for the security functions of such facilities or whose primary duty consists of the apprehension of youths who have escaped from such facilities or who have broken the conditions of supervision. An employee of the department so designated shall have the police power to investigate, to apprehend such children, and to arrest any person physically interfering with the proper apprehension of such children. An employee of the department so designated in the investigative section of the department shall have the power to obtain a search warrant for the purpose of locating and apprehending such children. Additionally, such employee, while on the grounds or in the buildings of the department's institutions or facilities, shall have the same law enforcement powers, including the power of arrest, as a law enforcement officer of the local government with police jurisdiction over such institutions or facilities. Such employee shall be authorized to carry weapons, upon written approval of the commissioner, notwithstanding Code Sections 16-11-126 and 16-11-129. The commissioner shall also be authorized to designate any person or organization with whom the department contracts for services pertaining to the management, custody, care, and control of delinquent children or children in need of services detained by the person or organization as a law enforcement unit under paragraph (7) of Code Section 35-8-2. Any employee or person designated under this subsection shall be considered to be a peace officer within the meaning of Chapter 8 of Title 35 and shall be certified under that chapter.

(3) For the purposes of investigation of children who have escaped from juvenile detention facilities of the department or of children who

are alleged to have broken the conditions of supervision, the department is empowered and authorized to request and receive from the Georgia Crime Information Center any information in the files of the Georgia Crime Information Center which will aid in the apprehension of such children.

(4) An employee designated pursuant to paragraph (2) of this subsection may take a child into custody without a warrant upon personal knowledge or written request of a person having knowledge of the escape or violation of conditions of supervision, or a child may be taken into custody pursuant to Code Section 15-11-501. When taking a child into custody pursuant to this paragraph, a designated employee of the department shall have the power to use all force reasonably necessary to take such child into custody.

(5) The child shall be kept in custody in a suitable place designated by the department and there detained until such child may be returned to the custody of the department.

(6) Such taking into custody shall not be termed an arrest; provided, however, that any person taking a child into custody pursuant to this subsection shall have the same immunity from civil and criminal liability as a peace officer making an arrest pursuant to a valid warrant.

(j) The department shall ensure that each child it releases under supervision or otherwise has suitable clothing, transportation to his or her home or to the county in which a suitable home or employment has been found for him or her, and such an amount of money as the rules and regulations of the board may authorize. The expenditure for clothing and for transportation and the payment of money to such child released may be made from funds for support and maintenance appropriated by the General Assembly to the department or to the institution from which such child is released or from local funds.

(k) Every child committed to the department, if not already discharged, shall be discharged from custody of the department when he or she reaches his or her twenty-first birthday.

(l) Commitment of a child to the custody of the department shall not operate to disqualify such child in any future examination, appointment, or application for public service under the government either of the state or of any political subdivision thereof.

(m) A commitment to the department shall not be received in evidence or used in any way in any proceedings in any court, except in subsequent proceedings for delinquency or being in need of services involving the same child and except in imposing sentence in any criminal proceeding against the same person.

(n)(1) The department shall conduct a continuing inquiry into the effectiveness of treatment methods it employs in seeking the rehabilitation of maladjusted children. To this end, the department shall maintain a statistical record of arrests and commitments of its wards subsequent to their discharge from the jurisdiction and control of the department and shall tabulate, analyze, and publish in print or electronically annually these data so that they may be used to evaluate the relative merits of methods of treatment. The department shall cooperate and coordinate with courts, juvenile court clerks, the Governor's Office for Children and Families, the Criminal Justice Coordinating Council, and public and private agencies in the collection of statistics and information regarding:

(A) Juvenile delinquency;

(B) Arrests made;

(C) Detentions made, the offense for which such detention was authorized, and the reason for each detention;

(D) Complaints filed;

(E) Informations filed;

(F) Petitions filed;

(G) The results of complaints, informations, and petitions, including whether such filings were dismissed, diverted, or adjudicated;

(H) Commitments to the department, the length of such commitment, and releases from the department;

(I) The department's placement decisions for commitments;

(J) Placement decisions to institutions, camps, or other facilities for delinquent children operated under the direction of courts or other local public authorities;

(K) Community programs utilized and completion data for such programs;

(L) Recidivism;

(M) Data collected by juvenile court clerks pursuant to Code Section 15-11-64; and

(N) Other information useful in determining the amount and causes of juvenile delinquency in this state.

(2) In order to facilitate the collection of the information required by paragraph (1) of this subsection, the department shall be authorized to inspect and copy all records of the court and law enforcement

agencies pertaining to juveniles and collect data from juvenile court clerks.

(o) When a child committed to the department is under court order to make certain restitution as a part of his or her treatment by the court, the requirement that the restitution be paid in full shall not cease with the order of commitment. The provision of the order requiring restitution shall remain in force and effect during the period of commitment, and the department is empowered to enforce such restitution requirement and to direct that payment of funds or notification of service completed be made to the clerk of the juvenile court or another employee of that court designated by the judge. (Code 1981, § 49-4A-8, enacted by Ga. L. 1992, p. 1983, § 24; Ga. L. 1993, p. 313, § 1; Ga. L. 1995, p. 619, § 8; Ga. L. 1996, p. 1016, §§ 1, 2; Ga. L. 1997, p. 582, § 3; Ga. L. 2000, p. 20, § 26; Ga. L. 2006, p. 293, § 4/HB 1145; Ga. L. 2010, p. 838, § 10/SB 388; Ga. L. 2010, p. 963, § 2-20/SB 308; Ga. L. 2013, p. 141, § 49/HB 79; Ga. L. 2013, p. 294, § 3-8/HB 242; Ga. L. 2014, p. 382, § 4/SB 324; Ga. L. 2015, p. 422, § 5-101/HB 310; Ga. L. 2015, p. 890, § 7/HB 263.)

The 2014 amendment, effective July 1, 2014, inserted "the supervision of delinquent children or children in need of services under intensive supervision in the community," near the end of the first sentence of paragraph (i)(2).

The 2015 amendments. — The first 2015 amendment, effective July 1, 2015, substituted "the juvenile probation officer, the community supervision officer, the prosecuting and police authorities" for "the probation officer, the prosecuting and police authorities" in subsection (c). See editor's note for applicability. The second 2015 amendment, effective July 1, 2015, inserted ", the Criminal Justice Coordinating Council," near the end of the introductory language of paragraph (n)(1).

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides, in part, that the amendment by this Act shall apply to sentences entered on or after July 1, 2015.

49-4A-11. Aiding or encouraging child to escape; hindering apprehension of child.

(a) Any person who shall knowingly aid, assist, or encourage any child who has been committed to the department to escape or to attempt to escape its control or custody shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than five years.

(b) Any person who shall knowingly harbor or shelter any child who has escaped the lawful custody or control of the department shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than five years.

(c) Any person who shall knowingly hinder the apprehension of any child under the supervision of the Department of Community Supervision or the lawful control or custody of the department who has been

placed by the department in one of its institutions or facilities and who has escaped therefrom or who has been placed under supervision and is alleged to have broken the conditions thereof shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than five years. (Code 1981, § 49-4A-11, enacted by Ga. L. 1992, p. 1983, § 24; Ga. L. 1996, p. 988, § 3; Ga. L. 2012, p. 1339, § 1A/SB 366; Ga. L. 2013, p. 294, § 3-11/HB 242; Ga. L. 2015, p. 422, § 5-102/HB 310.)

The 2015 amendment, effective July 1, 2015, inserted "supervision of the Department of Community Supervision or the" in subsection (c). See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides, in part, that the amendment by this Act shall apply to sentences entered on or after July 1, 2015.

CHAPTER 4B

INTERSTATE COMPACT FOR JUVENILES

Effective date. — This chapter became effective July 1, 2014.

Cross references. — Juvenile Code, T. 15, C. 11.

49-4B-1. Short title.

This chapter shall be known and may be cited as the "Interstate Compact for Juveniles." (Code 1981, § 49-4B-1, enacted by Ga. L. 2014, p. 763, § 2-1/HB 898.)

49-4B-2. Compact.

The Governor of this state is authorized and directed to execute a compact on behalf of the State of Georgia with any of the United States legally joining therein in the form substantially as follows:

ARTICLE I.

PURPOSE.

The compacting states to this Interstate Compact recognize that each state is responsible for the proper supervision or return of juveniles, delinquents and status offenders who are on probation or parole and

who have absconded, escaped or run away from supervision and control and in so doing have endangered their own safety and the safety of others. The compacting states also recognize that each state is responsible for the safe return of juveniles who have run away from home and in doing so have left their state of residence. The compacting states also recognize that Congress, by enacting the Crime Control Act, 4 U.S.C. Section 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime. It is the purpose of this compact, through means of joint and cooperative action among the compacting states to:

(A) Ensure that the adjudicated juveniles and status offenders subject to this compact are provided adequate supervision and services in the receiving state as ordered by the adjudicating judge or parole authority in the sending state;

(B) Ensure that the public safety interests of the citizens, including the victims of juvenile offenders, in both the sending and receiving states are adequately protected;

(C) Return juveniles who have run away, absconded or escaped from supervision or control or have been accused of an offense to the state requesting their return;

(D) Make contracts for the cooperative institutionalization in public facilities in member states for delinquent youth needing special services;

(E) Provide for the effective tracking and supervision of juveniles;

(F) Equitably allocate the costs, benefits and obligations of the compacting states;

(G) Establish procedures to manage the movement between states of juvenile offenders released to the community under the jurisdiction of courts, juvenile departments, or any other criminal or juvenile justice agency which has jurisdiction over juvenile offenders;

(H) Insure immediate notice to jurisdictions where defined offenders are authorized to travel or to relocate across state lines;

(I) Establish procedures to resolve pending charges (detainers) against juvenile offenders prior to transfer or release to the community under the terms of this compact;

(J) Establish a system of uniform data collection on information pertaining to juveniles subject to this compact that allows access by authorized juvenile justice and criminal justice officials, and regular reporting of Compact activities to heads of state executive, judicial, and legislative branches and juvenile and criminal justice administrators;

(K) Monitor compliance with rules governing interstate movement of juveniles and initiate interventions to address and correct noncompliance;

(L) Coordinate training and education regarding the regulation of interstate movement of juveniles for officials involved in such activity; and

(M) Coordinate the implementation and operation of the compact with the Interstate Compact on the Placement of Children, the Interstate Compact for Adult Offender Supervision and other compacts affecting juveniles particularly in those cases where concurrent or overlapping supervision issues arise. It is the policy of the compacting states that the activities conducted by the Interstate Commission created herein are the formation of public policies and therefore are public business. Furthermore, the compacting states shall cooperate and observe their individual and collective duties and responsibilities for the prompt return and acceptance of juveniles subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the purposes and policies of the compact.

ARTICLE II.

DEFINITIONS.

As used in this compact, unless the context clearly requires a different construction:

(A) "By-laws" means those by-laws established by the Interstate Commission for its governance, or for directing or controlling its actions or conduct.

(B) "Compact Administrator" means the individual in each compacting state appointed pursuant to the terms of this compact, responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the Interstate Commission and policies adopted by the State Council under this compact.

(C) "Compacting State" means any state which has enacted the enabling legislation for this compact.

(D) "Commissioner" means the voting representative of each compacting state appointed pursuant to Article III of this compact.

(E) "Court" means any court having jurisdiction over delinquent, neglected, or dependent children.

(F) "Deputy Compact Administrator" means the individual, if any, in each compacting state appointed to act on behalf of a Compact

Administrator pursuant to the terms of this compact responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the Interstate Commission and policies adopted by the State Council under this compact.

(G) "Interstate Commission" means the Interstate Commission for Juveniles created by Article III of this compact.

(H) "Juvenile" means any person defined as a juvenile in any member state or by the rules of the Interstate Commission, including:

(1) Accused Delinquent — a person charged with an offense that, if committed by an adult, would be a criminal offense;

(2) Adjudicated Delinquent — a person found to have committed an offense that, if committed by an adult, would be a criminal offense;

(3) Accused Status Offender — a person charged with an offense that would not be a criminal offense if committed by an adult;

(4) Adjudicated Status Offender — a person found to have committed an offense that would not be a criminal offense if committed by an adult; and

(5) Non-Offender — a person in need of supervision who has not been accused or adjudicated a status offender or delinquent.

(I) "Non-Compacting state" means any state which has not enacted the enabling legislation for this compact.

(J) "Probation or Parole" means any kind of supervision or conditional release of juveniles authorized under the laws of the compacting states.

(K) "Rule" means a written statement by the Interstate Commission promulgated pursuant to Article VI of this compact that is of general applicability, implements, interprets or prescribes a policy or provision of the Compact, or an organizational, procedural, or practice requirement of the Commission, and has the force and effect of statutory law in a compacting state, and includes the amendment, repeal, or suspension of an existing rule.

(L) "State" means a state of the United States, the District of Columbia (or its designee), the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands.

ARTICLE III.

INTERSTATE COMMISSION FOR JUVENILES.

(A) The compacting states hereby create the "Interstate Commission for Juveniles." The commission shall be a body corporate and

joint agency of the compacting states. The commission shall have all the responsibilities, powers and duties set forth herein, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

(B) The Interstate Commission shall consist of commissioners appointed by the appropriate appointing authority in each state pursuant to the rules and requirements of each compacting state and in consultation with the State Council for Interstate Juvenile Supervision created hereunder. The commissioner shall be the compact administrator, deputy compact administrator or designee from that state who shall serve on the Interstate Commission in such capacity under or pursuant to the applicable law of the compacting state.

(C) In addition to the commissioners who are the voting representatives of each state, the Interstate Commission shall include individuals who are not commissioners, but who are members of interested organizations. Such non-commissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general, Interstate Compact for Adult Offender Supervision, Interstate Compact for the Placement of Children, juvenile justice and juvenile corrections officials, and crime victims. All non-commissioner members of the Interstate Commission shall be ex-officio (non-voting) members. The Interstate Commission may provide in its by-laws for such additional ex-officio (non-voting) members, including members of other national organizations, in such numbers as shall be determined by the commission.

(D) Each compacting state represented at any meeting of the commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the by-laws of the Interstate Commission.

(E) The commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.

(F) The Interstate Commission shall establish an executive committee, which shall include commission officers, members, and others as determined by the by-laws. The executive committee shall have the power to act on behalf of the Interstate Commission during periods when the Interstate Commission is not in session, with the exception of rulemaking and/or amendment to the compact. The executive committee shall oversee the day-to-day activities of the

administration of the compact managed by an executive director and Interstate Commission staff; administers enforcement and compliance with the provisions of the compact, its by-laws and rules, and performs such other duties as directed by the Interstate Commission or set forth in the by-laws.

(G) Each member of the Interstate Commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the Interstate Commission. A member shall vote in person and shall not delegate a vote to another compacting state. However, a commissioner, in consultation with the state council, shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the compacting state at a specified meeting. The by-laws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication.

(H) The Interstate Commission's by-laws shall establish conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

(I) Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the Rules or as otherwise provided in the Compact. The Interstate Commission and any of its committees may close a meeting to the public where it determines by two-thirds vote that an open meeting would be likely to:

(1) Relate solely to the Interstate Commission's internal personnel practices and procedures;

(2) Disclose matters specifically exempted from disclosure by statute;

(3) Disclose trade secrets or commercial or financial information which is privileged or confidential;

(4) Involve accusing any person of a crime, or formally censuring any person;

(5) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(6) Disclose investigative records compiled for law enforcement purposes;

(7) Disclose information contained in or related to examination, operating or condition reports prepared by, or on behalf of, or for the use of, the Interstate Commission with respect to a regulated person or entity for the purpose of regulation or supervision of such person or entity;

(8) Disclose information, the premature disclosure of which would significantly endanger the stability of a regulated person or entity; or

(9) Specifically relate to the Interstate Commission's issuance of a subpoena, or its participation in a civil action or other legal proceeding.

(J) For every meeting closed pursuant to this provision, the Interstate Commission's legal counsel shall publicly certify that, in the legal counsel's opinion, the meeting may be closed to the public, and shall reference each relevant exemptive provision. The Interstate Commission shall keep minutes which shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefore, including a description of each of the views expressed on any item and the record of any roll call vote (reflected in the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

(K) The Interstate Commission shall collect standardized data concerning the interstate movement of juveniles as directed through its rules which shall specify the data to be collected, the means of collection and data exchange and reporting requirements. Such methods of data collection, exchange and reporting shall insofar as is reasonably possible conform to up-to-date technology and coordinate its information functions with the appropriate repository of records.

ARTICLE IV.

POWERS AND DUTIES OF THE INTERSTATE COMMISSION.

The commission shall have the following powers and duties:

(1) To provide for dispute resolution among compacting states.

(2) To promulgate rules to effect the purposes and obligations as enumerated in this compact, which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact.

(3) To oversee, supervise, and coordinate the interstate movement of juveniles subject to the terms of this compact and any by-laws adopted and rules promulgated by the Interstate Commission.

(4) To enforce compliance with the compact provisions, the rules promulgated by the Interstate Commission, and the by-laws, using all necessary and proper means, including but not limited to the use of judicial process.

(5) To establish and maintain offices which shall be located within one or more of the compacting states.

(6) To purchase and maintain insurance and bonds.

(7) To borrow, accept, hire or contract for services of personnel.

(8) To establish and appoint committees and hire staff which it deems necessary for the carrying out of its functions including, but not limited to, an executive committee as required by Article III which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties hereunder.

(9) To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties and determine their qualifications; and to establish the Interstate Commission's personnel policies and programs relating to, inter alia, conflicts of interest, rates of compensation, and qualifications of personnel.

(10) To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of it.

(11) To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use any property, real, personal, or mixed.

(12) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal or mixed.

(13) To establish a budget and make expenditures and levy dues as provided in Article VIII of this compact.

(14) To sue and be sued.

(15) To adopt a seal and by-laws governing the management and operation of the Interstate Commission.

(16) To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.

(17) To report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the Interstate Commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the Interstate Commission.

(18) To coordinate education, training and public awareness regarding the interstate movement of juveniles for officials involved in such activity.

(19) To establish uniform standards of the reporting, collecting and exchanging of data.

(20) The Interstate Commission shall maintain its corporate books and records in accordance with the By-laws.

ARTICLE V.

ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION.

Section A. By-laws

(1) The Interstate Commission shall, by a majority of the members present and voting, within twelve months after the first Interstate Commission meeting, adopt by-laws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

(a) Establishing the fiscal year of the Interstate Commission;

(b) Establishing an executive committee and such other committees as may be necessary;

(c) Provide for the establishment of committees governing any general or specific delegation of any authority or function of the Interstate Commission;

(d) Providing reasonable procedures for calling and conducting meetings of the Interstate Commission, and ensuring reasonable notice of each such meeting;

(e) Establishing the titles and responsibilities of the officers of the Interstate Commission;

(f) Providing a mechanism for concluding the operations of the Interstate Commission and the return of any surplus funds that may exist upon the termination of the Compact after the payment and/or reserving of all of its debts and obligations.

(g) Providing "start-up" rules for initial administration of the compact; and

(h) Establishing standards and procedures for compliance and technical assistance in carrying out the compact.

Section B. Officers and Staff

(1) The Interstate Commission shall, by a majority of the members, elect annually from among its members a chairperson and a vice

chairperson, each of whom shall have such authority and duties as may be specified in the by-laws. The chairperson or, in the chairperson's absence or disability, the vice-chairperson shall preside at all meetings of the Interstate Commission. The officers so elected shall serve without compensation or remuneration from the Interstate Commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for any ordinary and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the Interstate Commission.

(2) The Interstate Commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the Interstate Commission may deem appropriate. The executive director shall serve as secretary to the Interstate Commission, but shall not be a Member and shall hire and supervise such other staff as may be authorized by the Interstate Commission.

Section C. Qualified Immunity, Defense and Indemnification

(1) The Commission's executive director and employees shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to any actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided, that any such person shall not be protected from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

(2) The liability of any commissioner, or the employee or agent of a commissioner, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within such person's state may not exceed the limits of liability set forth under the Constitution and laws of that state for state officials, employees, and agents. Nothing in this subsection shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

(3) The Interstate Commission shall defend the executive director or the employees or representatives of the Interstate Commission and, subject to the approval of the Attorney General of the state represented by any commissioner of a compacting state, shall defend such commissioner or the commissioner's representatives or employees in any civil action seeking to impose liability arising out of any actual or alleged act, error or omission that occurred within the scope

of Interstate Commission employment, duties or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

(4) The Interstate Commission shall indemnify and hold the commissioner of a compacting state, or the commissioner's representatives or employees, or the Interstate Commission's representatives or employees, harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

ARTICLE VI.

RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION.

(A) The Interstate Commission shall promulgate and publish rules in order to effectively and efficiently achieve the purposes of the compact.

(B) Rulemaking shall occur pursuant to the criteria set forth in this article and the by-laws and rules adopted pursuant thereto. Such rulemaking shall substantially conform to the principles of the "Model State Administrative Procedures Act," 1981 Act, Uniform Laws Annotated, Vol. 15, p.1 (2000), or such other administrative procedures act, as the Interstate Commission deems appropriate consistent with due process requirements under the U.S. Constitution as now or hereafter interpreted by the U. S. Supreme Court. All rules and amendments shall become binding as of the date specified, as published with the final version of the rule as approved by the Commission.

(C) When promulgating a rule, the Interstate Commission shall, at a minimum:

(1) Publish the proposed rule's entire text stating the reasons for that proposed rule;

(2) Allow and invite any and all persons to submit written data, facts, opinions and arguments, which information shall be added to the record, and be made publicly available;

(3) Provide an opportunity for an informal hearing if petitioned by ten or more persons; and

(4) Promulgate a final rule and its effective date, if appropriate, based on input from state or local officials, or interested parties.

(D) Allow, not later than 60 days after a rule is promulgated, any interested person to file a petition in the United States District Court for the District of Columbia or in the Federal District Court where the Interstate Commission's principal office is located for judicial review of such rule. If the court finds that the Interstate Commission's action is not supported by substantial evidence in the rulemaking record, the court shall hold the rule unlawful and set it aside. For purposes of this subsection, evidence is substantial if it would be considered substantial evidence under the Model State Administrative Procedures Act.

(E) If a majority of the legislatures of the compacting states rejects a rule, those states may, by enactment of a statute or resolution in the same manner used to adopt the compact, cause that such rule shall have no further force and effect in any compacting state.

(F) The existing rules governing the operation of The Interstate Compact on Juveniles superseded by this act shall be null and void 12 months after the first meeting of the Interstate Commission created hereunder.

(G) Upon determination by the Interstate Commission that a state-of-emergency exists, it may promulgate an emergency rule which shall become effective immediately upon adoption, provided that the usual rulemaking procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible, but no later than ninety (90) days after the effective date of the emergency rule.

ARTICLE VII.

OVERSIGHT, ENFORCEMENT AND DISPUTE RESOLUTION BY THE INTERSTATE COMMISSION.

Section A. Oversight

(1) The Interstate Commission shall oversee the administration and operations of the interstate movement of juveniles subject to this compact in the compacting states and shall monitor such activities being administered in non-compacting states which may significantly affect compacting states.

(2) The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and

appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder shall be received by all the judges, public officers, commissions, and departments of the state government as evidence of the authorized statute and administrative rules. All courts shall take judicial notice of the compact and the rules. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact which may affect the powers, responsibilities or actions of the Interstate Commission, it shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes.

Section B. Dispute Resolution

(1) The compacting states shall report to the Interstate Commission on all issues and activities necessary for the administration of the compact as well as issues and activities pertaining to compliance with the provisions of the compact and its bylaws and rules.

(2) The Interstate Commission shall attempt, upon the request of a compacting state, to resolve any disputes or other issues which are subject to the compact and which may arise among compacting states and between compacting and non-compacting states. The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

(3) The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact using any or all means set forth in Article XI of this compact.

ARTICLE VIII.

FINANCE.

(A) The Interstate Commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization and ongoing activities.

(B) The Interstate Commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the Interstate Commission and its staff which must be in a total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission, taking into consideration the population of each compacting state and the volume of interstate movement of juveniles in each compacting state and shall promulgate a rule binding upon all compacting states which governs said assessment.

(C) The Interstate Commission shall not incur any obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Interstate Commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

(D) The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its by-laws. However, all receipts and disbursements of funds handled by the Interstate Commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Interstate Commission.

ARTICLE IX.

THE STATE COUNCIL.

Each member state shall create a State Council for Interstate Juvenile Supervision. While each state may determine the membership of its own state council, its membership must include at least one representative from the legislative, judicial, and executive branches of government, victims groups, and the compact administrator, deputy compact administrator or designee. Each compacting state retains the right to determine the qualifications of the compact administrator or deputy compact administrator. Each state council will advise and may exercise oversight and advocacy concerning that state's participation in Interstate Commission activities and other duties as may be determined by that state, including but not limited to, development of policy concerning operations and procedures of the compact within that state.

ARTICLE X.

COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT.

(A) Any state, the District of Columbia (or its designee), the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands as defined in Article II of this compact is eligible to become a compacting state.

(B) The compact shall become effective and binding upon legislative enactment of the compact into law by no less than 35 of the states. The initial effective date shall be the later of July 1, 2004 or upon enactment into law by the 35th jurisdiction. Thereafter it shall become effective and binding as to any other compacting state upon enactment of the compact into law by that state. The governors of non-member states or their designees shall be invited to participate in the activities of the Interstate Commission on a nonvoting basis

prior to adoption of the compact by all states and territories of the United States.

(C) The Interstate Commission may propose amendments to the compact for enactment by the compacting states. No amendment shall become effective and binding upon the Interstate Commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

ARTICLE XI.

WITHDRAWAL, DEFAULT, TERMINATION AND JUDICIAL ENFORCEMENT.

Section A. Withdrawal

(1) Once effective, the compact shall continue in force and remain binding upon each and every compacting state; provided that a compacting state may withdraw from the compact by specifically repealing the statute which enacted the compact into law.

(2) The effective date of withdrawal is the effective date of the repeal.

(3) The withdrawing state shall immediately notify the chairperson of the Interstate Commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The Interstate Commission shall notify the other compacting states of the withdrawing state's intent to withdraw within sixty days of its receipt thereof.

(4) The withdrawing state is responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.

(5) Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the Interstate Commission.

Section B. Technical Assistance, Fines, Suspension, Termination and Default

(1) If the Interstate Commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact, or the by-laws or duly promulgated rules, the Interstate Commission may impose any or all of the following penalties:

(a) Remedial training and technical assistance as directed by the Interstate Commission;

(b) Alternative Dispute Resolution;

(c) Fines, fees, and costs in such amounts as are deemed to be reasonable as fixed by the Interstate Commission; and

(d) Suspension or termination of membership in the compact, which shall be imposed only after all other reasonable means of securing compliance under the by-laws and rules have been exhausted and the Interstate Commission has therefore determined that the offending state is in default. Immediate notice of suspension shall be given by the Interstate Commission to the Governor, the Chief Justice or the Chief Judicial Officer of the state, the majority and minority leaders of the defaulting state's legislature, and the state council. The grounds for default include, but are not limited to, failure of a compacting state to perform such obligations or responsibilities imposed upon it by this compact, the by-laws, or duly promulgated rules and any other grounds designated in commission by-laws and rules. The Interstate Commission shall immediately notify the defaulting state in writing of the penalty imposed by the Interstate Commission and of the default pending a cure of the default. The commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the compacting states and all rights, privileges and benefits conferred by this compact shall be terminated from the effective date of termination.

(2) Within 60 days of the effective date of termination of a defaulting state, the Commission shall notify the Governor, the Chief Justice or Chief Judicial Officer, the Majority and Minority Leaders of the defaulting state's legislature, and the state council of such termination.

(3) The defaulting state is responsible for all assessments, obligations and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.

(4) The Interstate Commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon in writing between the Interstate Commission and the defaulting state.

(5) Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the Interstate Commission pursuant to the rules.

Section C. Judicial Enforcement

The Interstate Commission may, by majority vote of the members, initiate legal action in the United States District Court for the District

of Columbia or, at the discretion of the Interstate Commission, in the federal district where the Interstate Commission has its offices, to enforce compliance with the provisions of the compact, its duly promulgated rules and by-laws, against any compacting state in default. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation including reasonable attorneys fees.

Section D. Dissolution of Compact

(1) The compact dissolves effective upon the date of the withdrawal or default of the compacting state, which reduces membership in the compact to one compacting state.

(2) Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Interstate Commission shall be concluded and any surplus funds shall be distributed in accordance with the by-laws.

ARTICLE XII.

SEVERABILITY AND CONSTRUCTION.

(A) The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

(B) The provisions of this compact shall be liberally construed to effectuate its purposes.

ARTICLE XIII.

BINDING EFFECT OF COMPACT AND OTHER LAWS.

Section A. Other Laws

(1) Nothing herein prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.

(2) All compacting states' laws other than state Constitutions and other interstate compacts conflicting with this compact are superseded to the extent of the conflict.

Section B. Binding Effect of the Compact

(1) All lawful actions of the Interstate Commission, including all rules and by-laws promulgated by the Interstate Commission, are binding upon the compacting states.

(2) All agreements between the Interstate Commission and the compacting states are binding in accordance with their terms.

(3) Upon the request of a party to a conflict over meaning or interpretation of Interstate Commission actions, and upon a majority

vote of the compacting states, the Interstate Commission may issue advisory opinions regarding such meaning or interpretation.

(4) In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers or jurisdiction sought to be conferred by such provision upon the Interstate Commission shall be ineffective and such obligations, duties, powers or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers or jurisdiction are delegated by law in effect at the time this compact becomes effective. (Code 1981, § 49-4B-2, enacted by Ga. L. 2014, p. 763, § 2-1/HB 898.)

49-4B-3. Role of Governor in implementation of compact; promulgation of rules and regulations by board.

With respect to the Interstate Compact for Juveniles set out in Code Section 49-4B-2:

(1) The Governor shall by executive order establish the initial composition, terms, and compensation of the Georgia State Council for Interstate Juvenile Supervision required by Article IX of that compact, with the Governor making the appointments to those positions; except that any appointment to a position representing the legislative branch shall be made jointly by the Speaker of the House of Representatives and the President of the Senate and any appointment to a position representing the judicial branch shall be made by the Chief Justice of the Supreme Court;

(2) The Governor shall by executive order establish the qualifications, term, and compensation of the compact administrator required by Article III of that compact, with the state council making the appointment of the compact administrator;

(3) The Governor shall by executive order provide for any other matters necessary for implementation of the compact at the time that it becomes effective; and

(4) Except as otherwise provided for in this Code section, the board may promulgate rules or regulations necessary to implement and administer the compact, subject to the provisions of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." (Code 1981, § 49-4B-3, enacted by Ga. L. 2014, p. 763, § 2-1/HB 898.)

CHAPTER 5

PROGRAMS AND PROTECTION FOR CHILDREN AND YOUTH

Article 1

Children and Youth Services

Article 2

Child Abuse and Deprivation Records

Article 6

Programs and Protection for Children

Part 2

Delinquency Prevention and Community Based Services

Article 8

Central Child Abuse Registry

ARTICLE 1

CHILDREN AND YOUTH SERVICES

49-5-3. Definitions.

As used in this article, the term:

(1) "Age or developmentally appropriate" means activities or items that are generally accepted as suitable for children of the same chronological age or level of maturity or that are determined to be developmentally-appropriate for a child, based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group. In the case of a specific child, such term also includes activities or items that are suitable for the child based on the developmental stages attained by the child with respect to the cognitive, emotional, physical, and behavioral capacities of the child.

(2) "Caregiver" means a foster parent with whom a child in foster care has been placed or a designated official for a child care institution in which a child in foster care has been placed.

(3) "Child-caring institution" means any institution, society, agency, or facility, whether incorporated or not, which either primarily or incidentally provides full-time care for children through 18 years of age outside of their own homes, subject to such exceptions as may be provided in rules and regulations of the board.

(4) "Child-placing agency" means any institution, society, agency, or facility, whether incorporated or not, which places children in foster homes for temporary care or for adoption.

(5) "Child welfare and youth services" means duties and functions authorized or required by this article to be provided by the department with respect to:

(A) Establishment and enforcement of standards for social services and facilities for children and youths which supplement or substitute for parental care and supervision for the purpose of preventing or remedying or assisting in the solution of problems which may result in neglect, abuse, exploitation, or delinquency of children and youths;

(B) Protecting and caring for dependent children and youths;

(C) Protecting and promoting the welfare of children of working mothers;

(D) Providing social services to children and youths and their parents and care for children and youths born out of wedlock and their mothers;

(E) Promotion of coordination and cooperation among organizations, agencies, and citizen groups in community planning, organization, development, and implementation of such services; and

(F) Otherwise protecting and promoting the welfare of children and youths, including the strengthening of their homes where possible or, where needed, the provision of adequate care of children and youths away from their homes in foster family homes or day-care or other child care facilities.

(6) "Children's transition care center" means a transition center which provides a temporary, home-like environment for medically fragile children, technology dependent children, and children with special health care needs, up to 21 years of age, who are deemed clinically stable by a physician but dependent on life-sustaining medications, treatments, and equipment and who require assistance with activities of daily living to facilitate transitions from a hospital or other facility to a home or other appropriate setting. Such centers are designated sites that provide child placing services and nursing care, clinical support services, and therapies for short-term stays of one to 14 days and for longer stays of up to 90 days to facilitate transitions of children to homes or other appropriate settings. Extended stays of up to 12 months may be approved by the department by waiver.

(7) "Dependent child or youth" means any person so adjudged under Chapter 11 of Title 15.

(8) "Group-care facility" means a place providing care for groups of children and youths, other than a foster family home.

(9) "Homemaker service" means a service provided by a woman selected for her skills in the care of children and home management and placed in a home to help maintain and preserve the family life during the absence or incapacity of the mother.

(10) "In loco parentis" means a quasi-parental relationship inferred from and implied by the fact that a child or youth has been taken into a family and treated like any other member thereof, unless an express contract exists to the contrary.

(11) "Legal custody" means a legal status created by court order embodying the following rights and responsibilities:

(A) The right to have the physical possession of the child;

(B) The right and the duty to protect, train, and discipline the child;

(C) The responsibility to provide the child with food, clothing, shelter, education, and ordinary medical care; and

(D) The right to determine where and with whom the child shall live,

provided that these rights and responsibilities shall be exercised subject to the powers, rights, duties, and responsibilities of the guardian of the person of the child and subject to any residual parental rights and responsibilities. These rights shall be subject to judicial oversight and review pursuant to Code Section 15-11-212.

(12) "Maintenance" means all general expenses for care such as board; shelter; clothing; medical, dental, and hospital care; transportation; and other necessary or incidental expenses.

(13) "Maternity home" means any place in which any person, society, agency, corporation, or facility receives, treats, or cares for, within any six-month period, more than one pregnant woman whose child is to be born out of wedlock, either before, during, or within two weeks after childbirth. This definition shall not include women who receive maternity care in the home of a relative or in general or special hospitals, licensed according to law, in which maternity treatment and care is part of the medical services performed and the care of children is only brief and incidental.

(14) "Probation" means a legal status created by court order following adjudication in a delinquency case, whereby a child or youth is permitted to remain in the community, subject to supervision by the court or an agency designated by the court and subject to being returned to court at any time during the period of probation.

(15) "Protective supervision" means a legal status created by court order following adjudication in a dependency case, whereby a child's place of abode is not changed but assistance directed at correcting the dependency is provided through the court or an agency designated by the court.

(16) "Reasonable and prudent parent standard" means the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child, that a caregiver shall use when determining whether to allow a child in foster care under the responsibility of the department to participate in extracurricular, enrichment, cultural, and social activities.

(17) "Shelter" or "shelter care" means temporary care in a nonsecurity or open type of facility. (Ga. L. 1963, p. 81, § 3; Ga. L. 1982, p. 706, §§ 2, 6-8; Ga. L. 1988, p. 1720, § 16; Ga. L. 1991, p. 408, § 1; Ga. L. 1992, p. 1983, § 25; Ga. L. 1994, p. 97, § 49; Ga. L. 2004, p. 645, § 7; Ga. L. 2007, p. 590, § 3/HB 153; Ga. L. 2008, p. 1145,

§ 1/HB 984; Ga. L. 2013, p. 294, § 4-54/HB 242; Ga. L. 2015, p. 552, § 5/SB 138.)

The 2015 amendment, effective July 1, 2015, added paragraphs (1) and (2); redesignated former paragraphs (1) through (5) as present paragraphs (3) through (7), respectively; deleted former paragraphs (6), (7), and (8), each of which read "Reserved."; redesignated former paragraph (9) as present paragraph (8); deleted former paragraph (9.1), which read "Reserved."; redesignated former paragraphs (10) through (16) as present paragraphs (9) through (15), respectively; and added paragraph (16).

49-5-8. Powers and duties of department.

(a) The Department of Human Services is authorized and empowered, through its own programs and the programs of county or district departments of family and children services, to establish, maintain, extend, and improve throughout the state, within the limits of funds appropriated therefor, programs that will provide:

(1) Preventive services as follows:

(A) Collecting and disseminating information about the problems of children and youths and providing consultative assistance to groups, public and private, interested in developing programs and services for the prevention, control, and treatment of dependency and delinquency among the children of this state; and

(B) Research and demonstration projects designed to add to the store of information about the social and emotional problems of children and youths and improve the methods for dealing with these problems;

(2) Child welfare services as follows:

(A) Casework services for children and youths and for mothers bearing children out of wedlock, whether living in their own homes or elsewhere, to help overcome problems that result in dependency or delinquency;

(B) Protective services that will investigate complaints of abuse or abandonment of children and youths by parents, guardians, custodians, or persons serving in loco parentis and, on the basis of the findings of such investigation, offer social services to such parents, guardians, custodians, or persons serving in loco parentis in relation to the problem or bring the situation to the attention of a law enforcement agency, an appropriate court, or another community agency;

(C) Supervising and providing required services and care involved in the interstate placement of children;

(D) Homemaker service, or payment of the cost of such service, when needed due to the absence or incapacity of the mother;

(E) Boarding care, or payment of maintenance costs, in foster family homes or in group-care facilities for children and youths who cannot be adequately cared for in their own homes;

(F) Boarding care or payment of maintenance costs for mothers bearing children out of wedlock prior to, during, and for a reasonable period after childbirth;

(G) Day-care services for the care and protection of children whose parents are absent from the home or unable for other reasons to provide parental supervision; and

(H) Casework services and care to all children and youths where the parent, custodian, or guardian has placed such children in the custody of the department by voluntary agreement, until such agreement is revoked by the parent, custodian, or guardian upon request that such children be returned to the parent, custodian, or guardian or to another relative or the voluntary agreement expires; provided, however, that nothing in this subparagraph shall prohibit the department from obtaining an order placing such children in its custody in accordance with Article 3 of Chapter 11 of Title 15;

(3) Services to courts, upon their request, as follows:

(A) Accepting for casework services and care all children and youths whose legal custody is vested in the department by the court;

(B) Providing shelter or custodial care for children prior to examination and study or pending court hearing;

(C) Making social studies and reports to the court with respect to children and youths as to whom petitions have been filed; and

(D) Providing casework services and care or payment of maintenance costs for children and youths who have run away from their home communities within this state, or from their home communities in this state to another state, or from their home communities in another state to this state; paying the costs of returning such runaway children and youths to their home communities; and providing such services, care, or costs for runaway children and youths as may be required under Chapter 4B of Title 49;

(4) Regional group-care facilities for the purpose of:

(A) Providing local authorities an alternative to placing any child in a common jail;

(B) Shelter care prior to examination and study or pending a hearing before juvenile court;

(C) Detention prior to examination and study or pending a hearing before juvenile court; and

(D) Study and diagnosis pending determination of treatment or a hearing before juvenile court;

(5) Facilities designed to afford specialized and diversified programs, such as forestry camps, ranches, and group residences, for the care, treatment, and training of children and youths of different ages and different emotional, mental, and physical conditions;

(6) Regulation of child-placing agencies, child-caring institutions, and maternity homes by:

(A) Establishing rules and regulations for and providing consultation on such rules and regulations for all such agencies, institutions, and homes; and

(B) Licensing and inspecting periodically all such agencies, institutions, and homes to ensure their adherence to established standards as prescribed by the department;

(7) Adoption services, as follows:

(A) Supervising the work of all child-placing agencies when funds are made available;

(B) Providing services to parents desiring to surrender children for adoption as provided for in adoption statutes;

(C) Providing care or payment of maintenance costs for mothers bearing children out of wedlock and children being considered for adoption;

(D) Inquiring into the character and reputation of persons making application for the adoption of children;

(E) Placing children for adoption;

(F) Providing financial assistance to families adopting children once the child has been placed for adoption, determined eligible for assistance, and the adoption assistance agreement has been signed prior to the finalization of the adoption by all parties. Financial assistance may only be granted for hard-to-place children with physical, mental, or emotional disabilities or with other problems for whom it is difficult to find a permanent home. Financial assistance may not exceed 100 percent of the amount that would have been paid for boarding such child in a family foster home and for special services such as medical care not available through

insurance or public facilities. Such supplements shall only be available to families who could not provide for the child adequately without continued financial assistance. The department may review the supplements paid at any time but shall review them at least annually to determine the need for continued assistance;

(G) Providing payment to a licensed child-placing agency which places a child with special needs who is under the jurisdiction of the department for adoption. Payment may not exceed $5,000.00 for each such adoption arranged by an agency. The board shall define the special needs child. One-half of such payment shall be made at the time of placement and the remaining amount shall be paid when the adoption is finalized. If the adoption disrupts prior to finalization, the state shall be reimbursed by the child-placing agency in an amount calculated on a prorated basis based on length of time the child was in the home and the services provided; and

(H) Providing payment to an agency which recruits, educates, or trains potential adoptive or foster parents for preparation in anticipation of adopting or fostering a special needs child. The board shall define the special needs child and set the payment amount by rule and regulation. Upon appropriate documentation of these preplacement services in a timely manner, payments as set by the board shall be made upon enrollment of each potential adoptive or foster parent for such services;

(8) Staff development and recruitment programs through in-service training and educational scholarships for personnel as may be necessary to assure efficient and effective administration of the services and care for children and youths authorized in this article. The department is authorized to disburse state funds to match federal funds in order to provide qualified employees with graduate or postgraduate educational scholarships in accordance with rules and regulations adopted by the board pursuant to Article VIII, Section VII, Paragraph I of the Constitution of Georgia;

(9) Miscellaneous services, such as providing all medical, hospital, psychiatric, surgical, or dental services or payment of the costs of such services as may be considered appropriate and necessary by competent medical authority to those children subject to the supervision and control of the department without securing prior consent of parents or legal guardians;

(10) Preparation, education, and training for foster parents which will provide them with the appropriate knowledge and skills to provide for the needs of foster children, including knowledge and skills relating to the reasonable and prudent parent standard for the participation of the child in age or developmentally appropriate

activities, and continue such preparation, as necessary, after the placement of the children; and

(11) Each youth who is leaving foster care by reason of having attained 18 years of age, unless the child has been in foster care for less than six months, with, if the child is eligible to receive such document, an official or certified copy of the United States birth certificate of the child, a social security card issued by the Commissioner of Social Security, health insurance information, a copy of the child's medical records, and a driver's license or identification card issued by a state in accordance with the requirements of Section 202 of the REAL ID Act of 2005. Provision of records in accordance with this paragraph shall not be considered a violation of subsection (b) of Code Section 49-5-40.

(b) The department is authorized to perform such other duties as may be required under related statutes.

(c)(1) As used in paragraph (2) of this subsection, the term "state" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or any territory or possession of or territory or possession administered by the United States.

(2) The Department of Human Services is authorized to enter into interstate compacts, on behalf of this state, with other states to provide for the reciprocal provision of adoption assistance services.

(3) The purpose of paragraphs (1) and (2) of this subsection is to comply with the requirements of the Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272) and Part E of Title IV of the Social Security Act and to assure that recipients of adoption assistance in Georgia who change their residences to other states receive adoption assistance services, other than adoption assistance payments, from their new states of residence.

(d)(1) As used in this subsection, the term "sexually exploited child" shall have the same meaning as set forth in Code Section 15-21-201.

(2) The department, in consultation with the Office of the Child Advocate for the Protection of Children, the Criminal Justice Coordinating Council, and law enforcement officials, shall develop a plan for the delivery of services to sexually exploited children, victims of trafficking of persons for labor servitude, and such children and persons who are at risk of becoming victims of such offenses. In developing such plan, the department shall work with state and federal agencies, public and private entities, and other stakeholders as it deems appropriate and shall periodically review such plans to

ensure appropriate services are being delivered. Such plan shall include:

(A) Identifying children who need services;

(B) Providing assistance with applications for federal and state benefits, compensation, and services;

(C) Coordinating the delivery of physical and mental health, housing, education, job training, child care, legal, and other services;

(D) Preparing and disseminating educational and training materials to increase awareness of available services;

(E) Developing and maintaining community based services;

(F) Providing assistance with family reunification or repatriation to a country of origin; and

(G) Providing law enforcement officials assistance in identifying children in need of such services. (Ga. L. 1963, p. 81, § 11; Ga. L. 1969, p. 939, § 1; Ga. L. 1971, p. 351, § 1; Ga. L. 1973, p. 946, § 1; Ga. L. 1982, p. 3, § 49; Ga. L. 1983, p. 3, § 65; Ga. L. 1984, p. 22, § 49; Ga. L. 1985, p. 518, § 1; Ga. L. 1988, p. 1945, § 1; Ga. L. 1990, p. 8, § 49; Ga. L. 1992, p. 1983, § 28; Ga. L. 1993, p. 1969, § 3; Ga. L. 1994, p. 409, § 1; Ga. L. 1995, p. 1302, § 13; Ga. L. 1997, p. 1697, § 1; Ga. L. 2004, p. 645, § 8; Ga. L. 2009, p. 100, § 1/HB 237; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2013, p. 294, § 4-55/HB 242; Ga. L. 2014, p. 763, § 3-3/HB 898; Ga. L. 2015, p. 552, § 6/SB 138; Ga. L. 2015, p. 675, § 4-3/SB 8.)

The 2014 amendment, effective July 1, 2014, substituted "Chapter 4B of Title 49" for "Chapter 3 of Title 39" at the end of subparagraph (a)(3)(D).

The 2015 amendments. — The first 2015 amendment, effective July 1, 2015, in paragraph (a)(2), deleted "and" at the end of subparagraph (F), added "and" at the end of subparagraph (G), and added subparagraph (H); deleted "and" at the end of paragraph (a)(8), substituted a semicolon for the period at the end of subparagraph (a)(9), and added paragraphs (a)(10) and (a)(11). The second 2015 amendment, effective July 1, 2015, added subsection (d).

Editor's notes. — Ga. L. 2015, p. 675, § 1-1/SB 8, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Safe Harbor/Rachel's Law Act.'"

Ga. L. 2015, p. 675, § 1-2/SB 8, not codified by the General Assembly, provides: "(a) The General Assembly finds that arresting, prosecuting, and incarcerating victimized children serves to retraumatize children and increases their feelings of low self-esteem, making the process of recovery more difficult. The General Assembly acknowledges that both federal and state laws recognize that sexually exploited children are the victims of crime and should be treated as victims. The General Assembly finds that sexually exploited children deserve the protection of child welfare services, including family support, crisis intervention, counseling, and emergency housing services. The General Assembly finds that it is necessary and appropriate to adopt uniform and reasonable assessments and regulations to help address the deleterious secondary effects, including but not limited to, prostitution and sexual exploitation of

children, associated with adult entertainment establishments that allow the sale, possession, or consumption of alcohol on premises and that provide to their patrons performances and interaction involving various forms of nudity. The General Assembly finds that a correlation exists between adult live entertainment establishments and the sexual exploitation of children. The General Assembly finds that adult live entertainment establishments present a point of access for children to come into contact with individuals seeking to sexually exploit children. The General Assembly further finds that individuals seeking to exploit children utilize adult live entertainment establishments as a means of locating children for the purpose of sexual exploitation. The General Assembly acknowledges that many local governments in this state and in other states found deleterious secondary effects of adult entertainment establishments are exacerbated by the sale, possession, or consumption of alcohol in such establishments.

"(b) The purpose of this Act is to protect a child from further victimization after he or she is discovered to be a sexually exploited child by ensuring that a child protective response is in place in this state. The purpose and intended effect of this Act in imposing assessments and regulations on adult entertainment establishments is not to impose a restriction on the content or reasonable access to any materials or performances protected by the First Amendment of the United States Constitution or Article I, Section I, Paragraph V of the Constitution of this state."

Code Section 15-21-201, referenced in paragraph (d)(1), was enacted by Ga. L. 2015, p. 675, § 3-1/SB 8. Ga. L. 2015, p. 675, § 6-1(b)/SB 8, not codified by the General Assembly, provides that this article "shall become effective on January 1, 2017, provided that a constitutional amendment is passed by the General Assembly and is ratified by the voters in the November, 2016, General Election amending the Constitution of Georgia to authorize the General Assembly to provide specific funding to the Safe Harbor for Sexually Exploited Children Fund. If such an amendment to the Constitution of Georgia is not so ratified, then Part 3 of this Act shall not become effective and shall stand repealed by operation of law on January 1, 2017."

Law reviews. — For annual survey on administrative law, see 66 Mercer L. Rev. 1 (2014).

49-5-12.2. Immunity from liability.

Any caregiver or other entity under contract with the department shall be immune from civil liability as a result of a caregiver's approval of the participation of a child, who is in the custody of the department, in an age or developmentally appropriate activity, so long as such caregiver or other entity under contract with the department acts in accordance with the reasonable and prudent parent standard. No provision in any agreement between the department and a caregiver or an entity under contract with the department shall diminish the standard of care provided in this Code section. (Code 1981, § 49-5-12.2, enacted by Ga. L. 2015, p. 552, § 7/SB 138.)

Effective date. — This Code section became effective July 1, 2015.

49-5-19. Annual report on children and youth services.

The commissioner shall prepare and publish in print or electronically an annual report on the operations of the department and of county

departments of family and children services under this article and submit it to the Governor, the board, and all interested persons, officials, agencies, and groups, public or private. The report shall contain, in addition to information, statistics, and data required by other provisions of this article, a comprehensive analysis of performance of child welfare and youth services throughout the state; an analysis of goals to ensure that no more than 25 percent of children remain in the foster care system under Title IV-E of the Social Security Act for a period of 24 months or longer, as provided by Public Law 96-272; and such other information and recommendations of the commissioner as may be suitable. (Ga. L. 1963, p. 81, § 20; Ga. L. 1982, p. 1120, §§ 1, 2; Ga. L. 2010, p. 838, § 10/SB 388; Ga. L. 2015, p. 552, § 8/SB 138.)

The 2015 amendment, effective July 1, 2015, substituted "ensure that no more than 25 percent of children remain in the foster care system under Title IV-E of the Social Security Act" for "reduce by 1 percent each year, beginning with the fiscal year that starts October 1, 1983, the number of children who have been in family or institutional foster care" in this Code section.

49-5-24. Interagency efforts to gather and share comprehensive data; legislative findings; state-wide system for sharing data regarding care and protection of children; interagency data protocol; interagency agreements; waivers from certain federal regulations.

(a)(1) In an effort to improve the availability and quality of programs and services for the protection of children and youth, the General Assembly supports interagency efforts to gather comprehensive data and to actively share and disseminate data among those agencies responsible for making informed decisions regarding the treatment, care, security, and protection of children within this state.

(2) The General Assembly finds that the sharing and integration of appropriate data and information may have numerous benefits for children and families in this state, as well as for the state and local agencies attempting to provide services for them.

(3) The General Assembly finds that such data sharing and integration can serve the best interests of the child and the family, contribute to higher levels of effectiveness in service delivery, provide greater efficiency and productivity, and assist in the protection of children. Specifically, such data sharing and integration can reduce redundant data entry, expedite data sharing between agencies, provide for more timely service delivery, ensure more accurate and up-to-date information, assist in the development of a seamless system of services, and contribute to better performance and greater accountability by all involved parties.

(4) The General Assembly finds that the goals and purposes of this chapter, including the goal to develop a seamless system of services for children and their families, would be furthered by the development of a central repository of data for planning and evaluation purposes and urges the agencies to work toward the development of such a central repository.

(b) The department, working with the following agencies, shall develop and implement a workable state-wide system for sharing data relating to the care and protection of children between such agencies, utilizing existing state-wide data bases and data delivery systems to the greatest extent possible, to streamline access to such data:

(1) Division of Family and Children Services of the department;

(2) Department of Early Care and Learning;

(3) Department of Community Health;

(4) Department of Public Health;

(5) Department of Behavioral Health and Developmental Disabilities;

(6) Department of Juvenile Justice;

(7) Department of Education; and

(8) Georgia Crime Information Center.

(c) The department, working with such agencies, shall establish an interagency data protocol to enable each agency to accurately and efficiently collect and share data with the other agencies in the most effective and expeditious manner. The interagency data protocol shall:

(1) Include protocols and procedures to be used by agencies in data processing, including but not limited to collecting, storing, manipulating, sharing, retrieving, and releasing data;

(2) Delineate the specific data to be shared among all or specified agencies, the person or persons authorized by each agency to have access to another agency's data, and the security arrangements between agencies to ensure the protection of the data from unauthorized access that may threaten the privacy of persons and the confidentiality of the data;

(3) Establish the circumstances under which and the reasons for which an agency may share information with another agency, with a local political subdivision, with a nongovernmental entity, or with an individual; and

(4) Ensure compliance with all state and federal laws and regulations concerning the privacy of information, including but not limited

to the federal Family Educational Rights and Privacy Act of 1974, 20 U.S.C. Section 1232g, and the federal Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. Section 1320d to 1320d-9.

(d) To further delineate the parameters for the sharing of data with one or more agencies, specific interagency agreements may be executed between or among agencies.

(e) If a federal law or regulation impedes necessary data sharing between agencies, the appropriate agency or agencies shall make all reasonable attempts to be granted a waiver or exemption from the applicable law or regulation.

(f) The Department of Human Services and any of the agencies in subsection (b) of this Code section may apprise chairpersons of the appropriate committees of the General Assembly of the need for any legislative action necessary to facilitate or improve data sharing between agencies for the purposes of this Code section.

(g)(1) Notwithstanding any provision to the contrary, nothing in this Code section shall be construed to nullify any memoranda of understanding existing as of June 30, 2015, or prohibit the creation of memoranda of understanding on and after July 1, 2015, between or among agencies concerning data sharing or any other data sharing practices.

(2) Notwithstanding any provision to the contrary, nothing in this Code section shall prohibit the release to or sharing of data with nongovernmental entities or individuals if the release or sharing is otherwise required, permitted, or allowed pursuant to state or federal law. (Code 1981, § 49-5-24, enacted by Ga. L. 2015, p. 552, § 9/SB 138.)

Effective date. — This Code section became effective July 1, 2015.

ARTICLE 2

CHILD ABUSE AND DEPRIVATION RECORDS

49-5-41. Persons and agencies permitted access to records.

(a) Notwithstanding Code Section 49-5-40, the following persons or agencies shall have reasonable access to such records concerning reports of child abuse:

(1) Any federal, state, or local governmental entity, or any agency of any such entity, that has a need for information contained in such reports in order to carry out its legal responsibilities to protect children from abuse and neglect;

(2) A court, by subpoena, upon its finding that access to such records may be necessary for determination of an issue before such court; provided, however, that the court shall examine such record in camera, unless the court determines that public disclosure of the information contained therein is necessary for the resolution of an issue then before it and the record is otherwise admissible under the rules of evidence;

(3) A grand jury by subpoena upon its determination that access to such records is necessary in the conduct of its official business;

(4) The district attorney of any judicial circuit in this state, a solicitor-general, or any assistant district attorney or assistant solicitor-general who may seek such access in connection with official duty;

(5) Any adult who makes a report of suspected child abuse as required by Code Section 19-7-5, but such access shall include only notification regarding the child concerning whom the report was made, shall disclose only whether the investigation by the department or governmental child protective agency of the reported abuse is ongoing or completed and, if completed, whether child abuse was confirmed or unconfirmed, and shall only be disclosed if requested by the person making the report;

(5.1)(A) As used in this paragraph, the term:

(i) "Entity" means a child welfare agency providing protective services as designated by the department, or in the absence of such agency, a law enforcement agency or prosecuting attorney.

(ii) "School" shall have the same meaning as set forth in Code Section 19-7-5.

(B) Within 24 hours of a school employee making a report of suspected child abuse pursuant to Code Section 19-7-5, the entity that received such report shall acknowledge, in writing, the receipt of such report to the reporting individual. Within five days of completing the investigation of the suspected child abuse, such entity shall disclose, in writing, to the school counselor for the school such child was attending at the time of the reported child abuse, advising as to whether the suspected child abuse was confirmed or unconfirmed. If a school does not have a school counselor, such disclosure shall be made to the principal;

(6) Any adult requesting information regarding investigations by the department or a governmental child protective agency regarding the findings or information about the case of child abuse or neglect involving a fatality or near fatality; provided, however, that the following may be redacted from such records:

(A) Any record of law enforcement or prosecution agencies in any pending investigation or prosecution of criminal activity contained within the child abuse, neglect, or dependency records;

(B) Medical and mental health records made confidential by other provisions of law;

(C) Privileged communications of an attorney;

(D) The identifying information of a person who reported suspected child abuse;

(E) Information that may cause mental or physical harm to the sibling or other child living in the household of the child being investigated;

(F) The name of a child who is the subject of reported child abuse or neglect;

(G) The name of any parent or other person legally responsible for the child who is the subject of reported child abuse or neglect, provided that such person is not under investigation for the reported child abuse or neglect; and

(H) The name of any member of the household of the child who is the subject of reported child abuse or neglect, provided that such person is not under investigation for the reported child abuse or neglect.

(7) The State Personnel Board, by administrative subpoena, upon a finding by an administrative law judge appointed by the chief state administrative law judge pursuant to Article 2 of Chapter 13 of Title 50, that access to such records may be necessary for a determination of an issue involving departmental personnel and that issue involves the conduct of such personnel in child related employment activities, provided that only those parts of the record relevant to the child related employment activities shall be disclosed. The name of any complainant or client shall not be identified or entered into the record;

(7.1) A child advocacy center which is certified by the protocol committee, as such term is defined in Code Section 19-15-1, for the county where the principal office of the center is located as participating in the Children's Advocacy Centers of Georgia or a similar accreditation organization and which is operated for the purpose of investigation of known or suspected child abuse and treatment of a child or a family which is the subject of a report of abuse, and which has been created and supported through one or more intracommunity compacts between such advocacy center and one or more police agencies, the office of the district attorney, a legally mandated public

or private child protective agency, a mental health board, and a community health service board; provided, however, that any child advocacy center which is granted access to records concerning reports of child abuse shall be subject to the confidentiality provisions of subsection (b) of Code Section 49-5-40 and shall be subject to the penalties imposed by Code Section 49-5-44 for authorizing or permitting unauthorized access to or use of such records;

(8) Police or any other law enforcement agency of this state or any other state or any medical examiner or coroner investigating a report of known or suspected abuse or any review committee or protocol committee created pursuant to Chapter 15 of Title 19, it being found by the General Assembly that the disclosure of such information is necessary in order for such entities to carry out their legal responsibilities to protect children from abuse and neglect, which protective actions include bringing criminal actions for such abuse or neglect, and that such disclosure is therefore permissible and encouraged under the 1992 amendments to Section 107(b) (4) of the Child Abuse Prevention and Treatment Act, 42 U.S.C. Section 5106(A)(b)(4); and

(9) The Governor, the Attorney General, the Lieutenant Governor, or the Speaker of the House of Representatives when such officer makes a written request to the commissioner of the department which specifies the name of the child for which such access is sought and which describes such officer's need to have access to such records in order to determine whether the laws of this state are being complied with to protect children from abuse and neglect and whether such laws need to be changed to enhance such protection, for which purposes the General Assembly finds such disclosure is permissible and encouraged under the 1992 amendments to Section 107(b)(4) of the Child Abuse Prevention and Treatment Act, 42 U.S.C. Section 5106(A)(b)(4).

(b)(1) Notwithstanding Code Section 49-5-40, the juvenile court in the county in which are located any department or county board records concerning reports of child abuse, after application for inspection and a hearing on the issue, shall permit inspection of such records by or release of information from such records to individuals or entities who are engaged in legitimate research for educational, scientific, or public purposes and who comply with the provisions of this subsection. When those records are located in more than one county, the application may be made to the juvenile court of any one such county. A copy of any application authorized by this subsection shall be served on the nearest office of the department. In cases where the location of the records is unknown to the applicant, the application may be made to the Juvenile Court of Fulton County.

(2) The juvenile court to which an application is made pursuant to paragraph (1) of this subsection shall not grant the application unless:

(A) The application includes a description of the proposed research project, including a specific statement of the information required, the purpose for which the project requires that information, and a methodology to assure the information is not arbitrarily sought;

(B) The applicant carries the burden of showing the legitimacy of the research project; and

(C) Names and addresses of individuals, other than officials, employees, or agents of agencies receiving or investigating a report of abuse or treating a child or family which is the subject of a report, shall be deleted from any information released pursuant to this subsection unless the court determines that having the names and addresses open for review is essential to the research and the child, through his or her representative, gives permission to release the information.

(3) Notwithstanding the provisions of this subsection, access to the child abuse registry created pursuant to Article 8 of this chapter shall not be permitted except as allowed by Article 8 of this chapter.

(c) The department or a county or other state or local agency may permit access to records concerning reports of child abuse and may release information from such records to the following persons or agencies when deemed appropriate by such department:

(1) A physician who has before him or her a child whom he or she reasonably suspects may be abused;

(2) A licensed child-placing agency, a licensed child-caring institution of this state which is assisting the department by locating or providing foster or adoptive homes for children in the custody of the department, or an investigator appointed by a court of competent jurisdiction of this state to investigate a pending petition for adoption;

(3) A person legally authorized to place a child in protective custody when such person has before him or her a child he or she reasonably suspects may be abused and such person requires the information in the record or report in order to determine whether to place the child in protective custody;

(4) An agency or person having the legal custody, responsibility, or authorization to care for, treat, or supervise the child who is the subject of a report or record;

(5) An agency, facility, or person having responsibility or authorization to assist in making a judicial determination for the child who is the subject of the report or record of child abuse, including but not limited to members of officially recognized citizen review panels, court appointed guardians ad litem, certified Court Appointed Special Advocate (CASA) volunteers who are appointed by a judge of a juvenile court to act as advocates for the best interest of a child in a juvenile proceeding, and members of a protocol committee, as such term is defined in Code Section 19-15-1;

(6) A legally mandated public child protective agency or law enforcement agency of another state bound by similar confidentiality provisions and requirements when, during or following the department's investigation of a report of child abuse, the alleged abuser has left this state;

(7) A child welfare agency, as defined in Code Section 49-5-12, or a school where the department has investigated allegations of child abuse made against any employee of such agency or school and any child remains at risk from exposure to that employee, except that such access or release shall protect the identity of:

(A) Any person reporting the child abuse; and

(B) Any other person whose life or safety has been determined by the department or agency likely to be endangered if the identity were not so protected;

(8) An employee of a school or employee of a child welfare agency, as defined in Code Section 49-5-12, against whom allegations of child abuse have been made, when the department has been unable to determine the extent of the employee's involvement in alleged child abuse against any child in the care of that school or agency. In those instances, upon receiving a request and signed release from the employee, the department may report its findings to the employer, except that such access or release shall protect the identity of:

(A) Any person reporting the child abuse; and

(B) Any other person whose life or safety has been determined by the department or agency likely to be endangered if the identity were not so protected;

(9) Any person who has an ongoing relationship with the child named in the record or report of child abuse any part of which is to be disclosed to such person but only if that person is required to report suspected abuse of that child pursuant to subsection (b) of Code Section 19-7-5, as that subsection existed on January 1, 1990;

(10) Any school principal or any school guidance counselor, school social worker, or school psychologist who is certified under Chapter 2

of Title 20 and who is counseling a student as a part of such counseling person's school employment duties, but those records shall remain confidential and information obtained therefrom by that counseling person may not be disclosed to any person, except that student, not authorized under this Code section to obtain those records, and such unauthorized disclosure shall be punishable as a misdemeanor;

(10.1) Any school official of a school that a child who was the subject of a report of suspected child abuse made pursuant to Code Section 19-7-5 attends in which there is an ongoing investigation of the reported abuse. Any such ongoing investigation shall include contact with such school to obtain any relevant information from school personnel regarding the report of suspected child abuse;

(11) The Department of Early Care and Learning or the Department of Education; or

(12) An individual, at the time such individual is leaving foster care by reason of having attained the age of majority, but such access shall be limited to providing such individual with a free copy of his or her health and education records, including the most recent information available.

(d) Notwithstanding any other provision of law, any child-caring agency, child-placing agency, or identified foster parent shall have reasonable access to nonidentifying information from the placement or child protective services record compiled by any state department or agency having custody of a child with respect to any child who has been placed in the care or custody of such agency or foster parent or for whom foster care is being sought, excluding all documents obtained from outside sources which cannot be redisclosed under state or federal law. A department or agency shall respond to a request for access to a child's record within 14 days of receipt of such written request. Any child-caring agency, child-placing agency, or identified foster parent who is granted access to a child's record shall be subject to the penalties imposed by Code Section 49-5-44 for unauthorized access to or use of such records. Such record shall include reports of abuse of such child and the social history of the child and the child's family, the medical history of such child, including psychological or psychiatric evaluations, or educational records as allowed by state or federal law and any plan of care or placement plan developed by the department, provided that no identifying information is disclosed regarding such child. Notwithstanding the provisions of this subsection, a foster parent, as an agent of the department, shall have access to a child's medical and educational records in the same manner and to the same extent as the department itself and to the fullest extent allowable by law to ensure the proper care and education of a child entrusted to the foster parent's care.

(e)(1) Except as provided in paragraph (2) of this subsection and notwithstanding any other provisions of law, child abuse and dependency records shall not be confidential and shall be subject to Article 4 of Chapter 18 of Title 50 if the records are applicable to a child who at the time of his or her fatality or near fatality was:

(A) In the custody of a state department or agency or in the care of a foster parent;

(B) A child as defined in paragraph (3) of Code Section 15-11-741; or

(C) The subject of an investigation, report, referral, or complaint under Code Section 15-11-743.

(2) The following may be redacted from such records:

(A) Medical and mental health records made confidential by other provisions of law;

(B) Privileged communications of an attorney;

(C) The identifying information of a person who reported suspected child abuse;

(D) The name of a child who suffered a near fatality;

(E) The name of any sibling of the child who suffered the fatality or near fatality; and

(F) Any record of law enforcement or prosecution agencies in any pending investigation or prosecution of criminal activity contained within the child abuse, neglect, or dependency records.

(3) Upon the release of documents pursuant to this subsection, the department may comment publicly on the case.

(f) Notwithstanding Code Section 49-5-40, a child who alleges that he or she was abused shall be permitted access to records concerning a report of child abuse allegedly committed against him or her which are in the custody of the department or other state or local agency when he or she reaches 18 years of age; provided, however, that prior to such child reaching 18 years of age, if the requestor is not the subject of such report, such reports shall be made available to such child's parent or legal guardian or a deceased child's duly appointed representative when the requestor or his or her attorney submits a sworn affidavit that attests that such information is relevant to a pending or proposed civil action; and provided, further, that such reports shall still be subject to confidentiality pursuant to paragraph (4) of subsection (a) of Code Section 50-18-72. (Ga. L. 1975, p. 1135, § 2; Ga. L. 1990, p. 1778, § 2; Ga. L. 1991, p. 1320, §§ 1-3; Ga. L. 1993, p. 979, § 2; Ga. L. 1993, p. 1712, § 2; Ga. L. 1994, p. 967, §§ 1, 2; Ga. L. 1996, p. 1143, § 1; Ga. L.

1997, p. 844, § 4; Ga. L. 1998, p. 609, § 5; Ga. L. 2000, p. 243, § 3; Ga. L. 2001, p. 4, § 49; Ga. L. 2002, p. 861, § 1; Ga. L. 2003, p. 497, § 1; Ga. L. 2004, p. 645, § 16; Ga. L. 2006, p. 72, § 49/SB 465; Ga. L. 2007, p. 478, § 8/SB 128; Ga. L. 2009, p. 43, §§ 2, 3/SB 79; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2010, p. 316, § 1/HB 303; Ga. L. 2013, p. 294, § 4-56/HB 242; Ga. L. 2014, p. 34, § 2-10/SB 365; Ga. L. 2015, p. 552, § 10/SB 138; Ga. L. 2015, p. 689, § 5/HB 17; Ga. L. 2015, p. 845, § 1/HB 177.)

The 2014 amendment, effective July 1, 2014, rewrote subsections (a) and (e); and at the end of paragraph (c)(5), substituted "a protocol committee, as such term is defined in Code Section 19-15-1" for "a county child abuse protocol committee or task force."

The 2015 amendments. — The first 2015 amendment, effective July 1, 2015, in subsection (c), inserted "or her" and "or she" in paragraphs (1) and (3), substituted "department" for "Department of Human Services" in paragraph (2), and added paragraph (10.1); and added the last sentence in subsection (d). The second 2015 amendment, effective July 1, 2015, added subsection (f). The third 2015 amendment, effective July 1, 2015, added paragraph (a)(5.1).

Law reviews. — For article on the 2014 amendment of this Code section, see 31 Ga. St. U.L. Rev. 25 (2014)

JUDICIAL DECISIONS

Court's failure to provide access to records. — Although the trial court considered the records of the Department of Family and Children Services in reaching the court's verdict, the court erred in declining to provide access to the records, erroneously believing that the parties had to request that the records be admitted into evidence or be included in the record. Donohoe v. Donohoe, 323 Ga. App. 473, 746 S.E.2d 185 (2013).

49-5-44. Penalties for unauthorized access to records; use of records in public and criminal proceedings.

(a) Any person who authorizes or permits any person or agency not listed in Code Section 49-5-41 to have access to such records concerning reports of child abuse declared confidential by Code Section 49-5-40 shall be guilty of a misdemeanor.

(b) Any person who knowingly and under false pretense obtains or attempts to obtain records or reports of child abuse declared confidential by Code Section 49-5-40 or information contained therein except as authorized in this article or Code Section 19-7-5 shall be guilty of a misdemeanor.

(c) Records made confidential by Code Section 49-5-40 and information obtained from such records shall not be made a part of any record which is open to the public except that:

(1) A district attorney may use and make public that record or information in the course of any criminal prosecution for any offense which constitutes or results from child abuse; and

(2) The parties in a civil action may use and make public that record or information in the course of a civil action for childhood sexual abuse, as such term is defined in Code Section 9-3-33.1. (Ga. L. 1975, p. 1135, § 3; Ga. L. 1990, p. 1778, § 3; Ga. L. 2015, p. 689, § 6/HB 17.)

The 2015 amendment, effective July 1, 2015, in subsection (c), in the introductory language, substituted "shall not" for "may not" and added a colon at the end; added the paragraph (c)(1) designator, and in subsection (c)(1), substituted "A district" for "a district" at the beginning, and added "; and" at the end; and added paragraph (c)(2).

ARTICLE 6

PROGRAMS AND PROTECTION FOR CHILDREN

PART 2

DELINQUENCY PREVENTION AND COMMUNITY BASED SERVICES

49-5-155. Effect of article on Department of Juvenile Justice; office as recipient entity for federal grants.

(a) This article shall in no way preempt, duplicate, or supersede services, duties, or other functions performed pursuant to law or regulations by the Department of Juvenile Justice.

(b) Other than the Department of Juvenile Justice, the Governor's Office for Children and Families created pursuant to Code Section 49-5-132 and the Criminal Justice Coordinating Council shall be the only other authorized controlling recipient entity for grants under the United States Department of Justice Juvenile Justice Delinquency and Prevention Grants. (Code 1981, § 49-5-155, enacted by Ga. L. 1987, p. 1576, § 1; Ga. L. 1991, p. 435, § 13; Ga. L. 1992, p. 1983, § 34; Ga. L. 1997, p. 1453, § 1; Ga. L. 2008, p. 568, § 12/HB 1054; Ga. L. 2015, p. 890, § 8/HB 263.)

The 2015 amendment, effective July 1, 2015, inserted "and the Criminal Justice Coordinating Council" in subsection (b).

ARTICLE 8

CENTRAL CHILD ABUSE REGISTRY

Effective date. — This article became effective July 1, 2015.

Editor's notes. — Ga. L. 2015, p. 552, § 11/SB 138, effective July 1, 2015, repealed the Code sections formerly codified at Title 49, Chapter 5, Article 8 and enacted the current Title 49, Chapter 5, Article 8. The former Title 49, Chapter 5, Article 8 consisted of Code Sections 49-5-180 through 49-5-183, 49-5-183.1, and 49-5-184 through 49-5-187, relating to the central child abuse registry, and

was based on Ga. L. 1990, p. 1772, § 1; Ga. L. 1991, p. 1320, § 4; Ga. L. 1995, p. 937, § 2; Ga. L. 1996, p. 1143, §§ 2, 3 and 4; Ga. L. 1998, p. 128, § 49; Ga. L. 1998, p. 609, § 6; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2011, p. 99, § 93/HB 24; Ga. L. 2013, p. 222, § 20/HB 349.

49-5-180. Definitions.

As used in this article, the term:

(1) "Abuse investigator" means the division, any county or district department of family and children services, or any designee thereof.

(2) "Alleged child abuser" means a person named in an abuse investigator's report as having committed a substantiated case.

(3) "Child" means any person under 18 years of age.

(4) "Child abuse" has the same meaning as in paragraph (4) of subsection (b) of Code Section 19-7-5.

(5) "Child abuse crime" means:

(A) A violation of Article 1 or Article 2 of Chapter 5 of Title 16 or subsections (b) or (c) of Code Section 16-5-70, in which physical injury or death is inflicted on a minor child by a parent or caretaker thereof by other than accidental means;

(B) A violation of Code Section 16-12-1 regarding a minor child by a parent or caretaker thereof;

(C) A violation of Chapter 6 of Title 16 in which the victim is a minor;

(D) A violation of Part 2 of Article 3 of Chapter 12 of Title 16; or

(E) Any other crime that, in the discretion of the prosecuting attorney, constitutes child abuse.

(6) "Child abuse registry" means the Child Protective Services Information System.

(7) "Convicted" means a finding or verdict of guilty or a plea of guilty regardless of whether an appeal of the conviction has been sought. Such term also includes having been arrested, charged, and sentenced for the commission of a child abuse crime for which:

(A) A plea of nolo contendere was entered to the charge; or

(B) First offender treatment without adjudication of guilt pursuant to the charge was granted. The order entered pursuant to the provisions of Article 3 of Chapter 8 of Title 42, relating to probation of first offenders, or other first offender treatment shall be conclusive evidence of arrest and sentencing for such crime.

(8) "Convicted child abuser" means a person who is convicted.

(9) "Division" means the Division of Family and Children Services of the department.

(10) "Out-of-state abuse investigator" means a public child protective agency or law enforcement agency of any other state bound by confidentiality requirements as to information obtained under this article which are similar to those provided in this article.

(11) "Sexual abuse" has the same meaning as in paragraph (10) of subsection (b) of Code Section 19-7-5.

(12) "Sexual exploitation" has the same meaning as in paragraph (11) of subsection (b) of Code Section 19-7-5.

(13) "Substantiated case" means an investigation of a child abuse report by an abuse investigator which has been confirmed based upon a preponderance of the evidence that child abuse has occurred. (Code 1981, § 49-5-180, enacted by Ga. L. 2015, p. 552, § 11/SB 138.)

49-5-181. Establishment of central registry; function of registry.

(a) The division shall establish and maintain a central child abuse registry which shall be known as the "Child Protective Services Information System." The child abuse registry shall receive notice regarding:

(1) Substantiated cases occurring on and after July 1, 2016, reported to the division pursuant to subsection (a) of Code Section 49-5-182; and

(2) Convicted child abusers on and after July 1, 2016, reported to the division pursuant to subsection (b) of Code Section 49-5-182.

(b) The child abuse registry shall be operated in such a manner as to enable abuse investigators to:

(1) Immediately identify and locate substantiated cases and convicted child abusers; and

(2) Maintain and produce aggregate statistical data of substantiated cases and cases of child abuse in which a person was convicted. (Code 1981, § 49-5-181, enacted by Ga. L. 2015, p. 552, § 11/SB 138.)

49-5-182. Notice to division of substantiated case resulting from investigation by abuse investigator; notice of conviction by prosecutor; contents of notice.

(a) An abuse investigator who completes the investigation of a child abuse report made pursuant to Code Section 19-7-5 or otherwise and

determines that it is a substantiated case if the alleged child abuser was at least 13 years of age at the time of the commission of the act shall notify the division within 30 business days following such determination. Such notice may be submitted electronically and shall include the following:

(1) Name, age, sex, race, social security number, if known, and birthdate of the child alleged to have been abused;

(2) Name, age, sex, race, social security number, and birthdate of the parents, custodian, or caretaker of the child alleged to have been abused, if known;

(3) Name, age, sex, race, social security number, and birthdate of the person who committed the substantiated case; and

(4) A summary of the known details of the child abuse which at a minimum shall contain the classification of the abuse as provided in paragraph (4) of subsection (b) of Code Section 19-7-5 as either sexual abuse, physical abuse, child neglect, or a combination thereof.

(b) Upon receipt of a sentence for a convicted child abuser, the prosecuting attorney shall notify the division within 30 business days following such receipt. Such notice may be submitted electronically and shall include the following:

(1) A certified copy of the sentence;

(2) A complete history of the conviction, including a certified copy of the indictment, accusation, or both and such other information as the division may require;

(3) Name, age, sex, race, social security number, and birthdate of the victim of child abuse by the convicted child abuser, if known; and

(4) Name, age, sex, race, social security number, and birthdate of the parents, custodian, or caretaker of the victim of child abuse by the convicted child abuser, if known. (Code 1981, § 49-5-182, enacted by Ga. L. 2015, p. 552, § 11/SB 138.)

49-5-183. Division to update registry upon notification of substantiated case; notice to alleged abuser; representation of alleged minor child abuser; hearing on expungement of name from registry.

(a) Upon receipt of an investigator's report of a substantiated case pursuant to subsection (a) of Code Section 49-5-182 naming an alleged child abuser, the division:

(1) Shall include in the child abuse registry the name of the alleged child abuser, the classification of the abuse as provided in paragraph

(4) of subsection (a) of Code Section 49-5-182, and a copy of the investigator's report; and

(2) Shall mail to such alleged child abuser in such report a notice regarding the substantiated case via certified mail, return receipt requested. It shall be a rebuttable presumption that any such notice has been received if the return receipt has been received by the division. The notice shall further inform such alleged child abuser of such person's right to a hearing to appeal such determination. The notice shall further inform such alleged child abuser of the procedures for obtaining the hearing and that an opportunity shall be afforded all parties to be represented by legal counsel and to respond and present evidence on all issues involved.

(b) Any alleged child abuser who has not attained the age of majority set forth by Code Section 39-1-1 at the time of the hearing requested pursuant to subsection (d) of this Code section shall be entitled to representation at the hearing either by the alleged child abuser's parent or other legal guardian or by an attorney employed by such parent or guardian. In the event the administrative law judge conducting the hearing determines that any such alleged minor child abuser will not be so represented at the hearing, or that the interests of any such alleged minor child abuser may conflict with the interests of the alleged minor child abuser's parent or other legal guardian, the administrative law judge shall order the division to apply to the superior court of the county in which the alleged act of child abuse was committed to have counsel appointed for the alleged minor child abuser. Payment for any such court appointed representation shall be made by such county.

(c) In order to exercise such right to a hearing, the alleged child abuser must file a written request for a hearing with the division within ten days after receipt of such notice. The written request shall contain the alleged child abuser's current residence address and, if the person has a telephone, a telephone number at which such person may be notified of the hearing.

(d) If the division receives a timely written request for a hearing under subsection (c) of this Code section, it shall transmit that request to the Office of State Administrative Hearings within ten days after such receipt. Notwithstanding any other provision of law, the Office of State Administrative Hearings shall conduct a hearing upon that request in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," and the rules of the Office of State Administrative Hearings adopted pursuant thereto, except as otherwise provided in this article. The hearing shall be for the purpose of an administrative determination regarding whether, based on a preponderance of evidence, there was child abuse committed by the alleged

child abuser to justify the investigator's determination of a substantiated case. The Office of State Administrative Hearings shall give notice of the time and place of the hearing to the alleged child abuser by first-class mail to the address specified in the written request for a hearing and to the division by first-class mail at least ten days prior to the date of the hearing. It shall be a rebuttable presumption that any such notice is received five days after deposit in the United States mail with the correct address of the alleged child abuser and the division, respectively, and proper postage affixed. Unless postponed by mutual consent of the parties and the administrative law judge or for good cause shown, that hearing shall be held within 30 business days following receipt by the Office of State Administrative Hearings of the request for a hearing, and a decision shall be rendered within five business days following such hearing. A motion for an expedited hearing may be filed in accordance with rules and regulations promulgated by the Office of State Administrative Hearings. The hearing may be continued as necessary to allow the appointment of counsel. A telephone hearing may be conducted concerning this matter in accordance with standards prescribed in paragraph (5) of Code Section 50-13-15. Upon the request of any party to the proceeding or the assigned administrative law judge, venue may be transferred to any location within the state if all parties and the administrative law judge consent to such a change of venue. Otherwise, the hearing shall be conducted in the county in which the alleged act of child abuse was committed. The doctrines of collateral estoppel and res judicata as applied in judicial proceedings are applicable to the administrative hearings held pursuant to this article.

(e) At the conclusion of the hearing under subsection (d) of this Code section, upon a finding that there is not a preponderance of evidence to conclude that the alleged child abuser committed an act of child abuse, the administrative law judge shall order that the alleged child abuser's name be removed from the child abuse registry. The general public shall be excluded from hearings of the Office of State Administrative Hearings held pursuant to this article and the files and records relating thereto shall be confidential and not subject to public inspection.

(f) Notwithstanding any other provision of law, the decision of the administrative law judge under subsection (e) of this Code section shall constitute the final administrative decision. Any party shall have the right of judicial review of such decision in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," except that the petition for review shall be filed within ten days after such decision and may only be filed with and the decision appealed to the superior court of the county where the hearing took place or, if the hearing was conducted by telephone, the Superior Court of Fulton County. The procedures for such appeal shall be substantially the same as those for

judicial review of contested cases under Code Section 50-13-19 except that the filing of a petition for judicial review stays the listing of the petitioner's name upon the child abuse registry and the superior court shall conduct the review and render its decision thereon within 30 days following the filing of the petition. The review and records thereof shall be closed to the public and not subject to public inspection.

(g) The administrative law judge shall transmit to the division his or her decision regarding the alleged child abuser and the investigator's report regarding such individual within ten days following that decision unless a petition for judicial review of that decision is filed within the permitted time period. If a timely petition for judicial review is filed within the permitted time period, the superior court shall transmit to the division its decision regarding the alleged child abuser and the investigator's report regarding such individual within ten days following that decision. (Code 1981, § 49-5-183, enacted by Ga. L. 2015, p. 552, § 11/SB 138.)

49-5-184. Information to be included in abuse registry upon notification of child abuse conviction; expungement hearing.

(a) Upon receipt of a notice from a prosecuting attorney pursuant to subsection (b) of Code Section 49-5-182, the division shall include in the child abuse registry the name of the convicted child abuser, the offense for which he or she was convicted, and whether the offense is considered physical abuse, neglect or exploitation, sexual abuse, or sexual exploitation.

(b) Any person whose name appears in the child abuse registry as a convicted child abuser shall be entitled to a hearing for an administrative determination of whether or not expungement of such person's name should be ordered. In order to exercise such right, the person must file a written request for a hearing with the division. The provisions of this subsection shall not apply to persons who have waived their hearing after receipt of notice.

(c) Upon receipt by the division of a written request for a hearing pursuant to subsection (b) of this Code section, the division shall transmit such request to the Office of State Administrative Hearings within ten days of receipt. The Office of State Administrative Hearings shall conduct a hearing in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," except as otherwise provided in this Code section. A hearing shall be conducted within 60 days following receipt of the request by the Office of State Administrative Hearings. Upon a finding that there is no credible evidence that the person who requested the hearing is a convicted child abuser, the Office

of State Administrative Hearings shall order the division to expunge that name from the registry. The general public shall be excluded from such hearings and the files and records relating thereto shall be confidential and not subject to public inspection.

(d) Notwithstanding any other provision of law, the decision of the Office of State Administrative Hearings pursuant to subsection (c) of this Code section shall constitute the final agency decision. Any party shall have the right of judicial review of that decision in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," except that the petition for review shall be filed within 30 days after such decision and may only be filed with and the decision appealed to the superior court of the county where the hearing took place or, if the hearing was conducted by telephone, the Superior Court of Fulton County. The procedures for such appeal shall be the same as those for judicial review of contested cases under Code Section 50-13-19. The review and records thereof shall be closed to the public and not subject to public inspection. (Code 1981, § 49-5-184, enacted by Ga. L. 2015, p. 552, § 11/SB 138.)

49-5-185. Access to information in registry; statistical analysis of substantiated cases and convictions entered into child abuse registry; requests to determine if one's name is included in registry.

(a) Except as otherwise authorized in subsection (c) of this Code section and subsection (b) of Code Section 49-5-186, the only persons or entities who may access or be provided any information from the child abuse registry are:

(1) An abuse investigator who has investigated or is investigating a case of possible child abuse who shall only be provided information relating to that case for purposes of using that information in such investigation;

(2) State or other government agencies of this state or any other state which license entities that have interactions with children or are responsible for providing care for children or licensed entities in this state which interact with children or are responsible for providing care for children which shall only be provided information for purposes of licensing or employment of a specific individual;

(3) A licensing entity may disclose information from the child abuse registry in a written notice to an applicant or licensed entity whose license is denied or revoked as a result of information found in the registry, to the extent that such information is required in such notice by a federal or state law, regulation or policy, or in a proceeding arising from an adverse action taken against a licensed entity or individual as a result of information found in the registry; and

(4) The Department of Early Care and Learning is authorized to disclose all or a portion of the information from the child abuse registry used to determine that a records check is unsatisfactory or to rescind a determination that a records check is satisfactory to an individual who has submitted a records check application or whose satisfactory records check determination has been rescinded in accordance with Article 2 of Chapter 1A of Title 20.

(b) The division shall provide the Governor's office, the General Assembly, district attorneys, and law enforcement agencies with a statistical analysis of substantiated cases of child abuse and convicted child abusers entered into the child abuse registry at the end of each calendar year. This analysis shall not include the names of any children, parents, or persons associated with the child abuse. This analysis shall not be protected by any laws prohibiting the dissemination of confidential information.

(c) A person may make a written request to the division to find out whether such person's name is included in the child abuse registry. Upon presentation of a passport, military identification card, driver's license, or identification card authorized under Code Sections 40-5-100 through 40-5-104, the office receiving such request shall disclose to such person whether his or her name is included in the child abuse registry and, if so, the date upon which his or her name was listed in the registry and the substantiated case or child abuse crime for which such person was convicted.

(d) The division shall provide persons and entities authorized in subsection (a) of this Code section with access to or information from the child abuse registry sufficient to meet the requirements prescribed by Congress as conditions to federal funding for programs administered by such entities or persons. (Code 1981, § 49-5-185, enacted by Ga. L. 2015, p. 552, § 11/SB 138.)

49-5-186. Confidentiality of information in registry; penalties for unauthorized use of information.

(a) Information in the child abuse registry shall be confidential and shall not be subject to Article 4 of Chapter 18 of Title 50 and access thereto is prohibited except as provided in this article. Such information shall not be deemed to be a record of child abuse for purposes of Article 2 of this chapter.

(b)(1) Information obtained from the child abuse registry shall not be made a part of any record which is open to the public except as provided in paragraph (2) of this subsection; provided, however, that a district attorney may use such information in any court proceeding in the course of any criminal prosecution, if such information is otherwise admissible.

(2) Notwithstanding any other provisions of law, information in the child abuse registry applicable to a child who at the time of his or her death was in the custody of a state department or agency or foster parent, which information relates to the child while in the custody of such state department or agency or foster parent, shall not be confidential and shall be subject to Article 4 of Chapter 18 of Title 50.

(c) Any person who knowingly provides any information from the child abuse registry to a person not authorized to be provided such information under this article shall be guilty of a misdemeanor.

(d) Any person who knowingly and under false pretense obtains or attempts to obtain information which was obtained from the child abuse registry, except as authorized in this article, shall be guilty of a misdemeanor. (Code 1981, § 49-5-186, enacted by Ga. L. 2015, p. 552, § 11/SB 138.)

49-5-187. Immunity from civil or criminal liability.

The division and other authorized agencies, entities, and persons and the employees thereof providing information from the child abuse registry as authorized by this article and any person who uses such information shall have no civil liability or criminal responsibility therefor. (Code 1981, § 49-5-187, enacted by Ga. L. 2015, p. 552, § 11/SB 138.)

CHAPTER 6

SERVICES FOR THE AGING

Article 5

Community Care and Services for the Elderly

Article 7

Licensure of Adult Day Center

ARTICLE 5

COMMUNITY CARE AND SERVICES FOR THE ELDERLY

49-6-62. Establishment of community care unit; provision of services; annual service plan; implementation plan; annual progress report; fees and contributions; funding.

(a) The department shall establish a community care unit within the aging section. The community care unit shall plan and oversee implementation of a system of coordinated community care and support services for the elderly. The community care unit shall develop uniform assessment criteria that shall be used to determine an individual's functional impairment and to evaluate on a periodic basis the individual's need for community support services or institutionalized long-term care. The community care unit shall also define each community care service and establish standards for the delivery of community care services. Where appropriate, the community care unit shall utilize existing standards and definitions.

(b) The department shall designate specified geographic service areas which shall be defined in such a way as to ensure the efficient delivery of community care services.

(c) The department shall contract with a lead agency to coordinate and provide community care services within each specified geographic service area.

(d) Each lead agency shall annually submit to the community care unit for approval a service plan evaluating the community care needs of the functionally impaired elderly, identifying priority services and target client groups, and detailing the means by which community care services will be delivered for the service area of that agency. The plan shall also include projected program costs and fees to be charged for services. The lead agency may exclude from the service plan those individuals eligible for benefits under the "Georgia Medical Assistance Act of 1977," as amended, for whom there is a reasonable expectation that community based services would be more expensive than services the individual would otherwise receive which would have been reimbursable under the "Georgia Medical Assistance Act of 1977," as amended.

(e) The department shall develop a plan which shall provide for the implementation of a community care system in each of the specified geographic service areas by July 1, 1985. The three-year plan shall be developed concurrent with and integrated into the state plan on aging required under the Older Americans Act of 1965 and shall provide for

coordination of all community based services for the elderly. The three-year plan shall include an inventory of existing services and an analysis comparing the cost of institutional long-term care and the cost of community care and other community based services for the elderly. The multiyear plan shall be presented to the Board of Human Services no later than July 31, 1983.

(f) At the end of the three-year implementation period an annual community care service plan shall be incorporated into the state plan on aging.

(g) The department shall submit on January 1 of each year, beginning in 1984, a progress report on the implementation of the plan required by subsection (e) of this Code section to the Speaker of the House of Representatives, the Senate Committee on Assignments, the chairman of the House Committee on Health and Human Services, and the chairman of the Senate Health and Human Services Committee.

(h) In accordance with rules promulgated by the department, lead agencies may collect fees for community care case management and other services. Such fees shall be established on a sliding scale based upon income and economic need. Fees will not be charged those individuals for the mandatory assessment described in subsection (e) of Code Section 49-6-63. Lead agencies may accept contributions of money or contributions in kind from functionally impaired elderly persons, members of their families, or other interested persons or organizations. Such contributions may not be a condition of services and shall only be used to further the provision of community care services.

(i) Funding for services under this article shall be in addition to and not in lieu of funding for existing community services for the elderly. The department and the lead agency shall ensure that all other funding sources available, including reimbursement under the "Georgia Medical Assistance Act of 1977" and the Older Americans Act of 1965, have been used prior to utilizing state funds for community care for the elderly. (Code 1933, § 88-1903D, enacted by Ga. L. 1982, p. 2248, § 1; Code 1981, § 49-6-62, enacted by Ga. L. 1982, p. 2248, § 4; Ga. L. 1983, p. 3, § 38; Ga. L. 1984, p. 22, § 49; Ga. L. 1985, p. 149, § 49; Ga. L. 1992, p. 6, § 49; Ga. L. 2005, p. 48, § 8/HB 309; Ga. L. 2009, p. 8, § 49/SB 46; Ga. L. 2009, p. 453, § 2-3/HB 228; Ga. L. 2013, p. 141, § 49/HB 79; Ga. L. 2014, p. 866, § 49/SB 340.)

The 2014 amendment, effective April 29, 2014, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsection (g).

ARTICLE 7

LICENSURE OF ADULT DAY CENTER

49-6-86. Reasonable fees for licensure of adult day centers; use of fees.

The department shall be authorized to charge reasonable application fees, license fees, renewal fees, or other similar fees relating to the licensure of adult day centers in an amount established by the board pursuant to rules and regulations. The board shall take into consideration input from consumers, providers of adult day health services, and advocates during the rulemaking process to establish such fees. If so appropriated by the General Assembly, the fees shall be used to support the licensing, inspecting, and monitoring of adult day centers. Fees may be refunded by the department for good cause, as determined by the department. (Code 1981, § 49-6-86, enacted by Ga. L. 2007, p. 348, § 2/HB 505.)

Effective date. — This Code section became effective July 1, 2014.

CHAPTER 9

TRANSFER OF DIVISION OF REHABILITATION SERVICES TO DEPARTMENT OF LABOR

Article 1

General Provisions

ARTICLE 1

GENERAL PROVISIONS

49-9-4. Creation of Georgia Vocational Rehabilitation Agency; function.

(a)(1) The Georgia Vocational Rehabilitation Agency is created and established to perform the functions and assume the duties, powers, and authority exercised on June 30, 2012, by the Division of Rehabilitation Services within the Department of Labor including the disability adjudication section, and such division shall be reconstituted as the Georgia Vocational Rehabilitation Agency effective July 1, 2012.

(2) The Georgia Vocational Rehabilitation Agency shall be assigned to the Department of Human Services for administrative purposes only, as prescribed in Code Section 50-4-3.

(3) On and after July 1, 2012, the powers, functions, duties, programs, institutions, and authority of the Georgia Vocational Rehabilitation Agency relating to the former Division of Rehabilitation Services within the Department of Labor shall be performed and exercised by the Georgia Vocational Rehabilitation Agency pursuant to this article. The Georgia Vocational Rehabilitation Agency shall take all necessary steps to ensure continuity of services for the vocational rehabilitation of persons with disabilities during such transfer.

(b) The agency shall be administered by a director appointed pursuant to Code Section 49-9-3. The policy-making functions which were vested in the Department of Labor pertaining to the Division of Rehabilitation Services are vested in the Georgia Vocational Rehabilitation Agency effective July 1, 2012.

(c) Any proceedings or other matters pending before the Division of Rehabilitation Services of the Department of Labor on June 30, 2012, which relate to the functions transferred to the Georgia Vocational Rehabilitation Agency shall be transferred to the agency on July 1, 2012.

(d) The Georgia Vocational Rehabilitation Agency shall, from July 1, 2012, assume possession and control of all records, papers, equipment, supplies, office space, and all other tangible property possessed and controlled by the Department of Labor as of June 30, 2012, in the Department of Labor's administration of the Division of Rehabilitation Services. All funds attributable to the Division of Rehabilitation Services and its programs and institutions from state, federal, and any other public or private source shall be transferred to the Georgia Vocational Rehabilitation Agency on July 1, 2012.

(e) On July 1, 2012, the Georgia Vocational Rehabilitation Agency shall receive custody of any state owned real property in the custody of the Department of Labor on June 30, 2012, which pertains to the functions transferred from the Division of Rehabilitation Services to the Georgia Vocational Rehabilitation Agency.

(f) Prior to July 1, 2012, the Office of Planning and Budget shall calculate, in consultation with the Department of Labor, the amount of all funds of or attributable to the Division of Rehabilitation Services and its programs and institutions from any source that are used to provide administrative or other services within the Department of Labor, including funds from the disability adjudication section, the cost allocation system, and any indirect costs funding from the federal

government or any other source. The amount calculated shall be transferred to the agency on July 1, 2012.

(g) All officers, employees, and agents of the Division of Rehabilitation Services who, on June 30, 2012, are engaged in the performance of a function or duty which shall be vested in the Georgia Vocational Rehabilitation Agency on July 1, 2012, by this chapter, shall be automatically transferred to the Georgia Vocational Rehabilitation Agency on July 1, 2012. An equivalent number of positions or funds of the Department of Labor which provide administrative support to the Division of Rehabilitation Services shall be transferred to the Georgia Vocational Rehabilitation Agency on July 1, 2012. Such persons shall be subject to the employment practices and policies of the Georgia Vocational Rehabilitation Agency on and after July 1, 2012, but consistent with the compensation and benefits of other employees of that department holding positions substantially the same as the transferred employees; the compensation and benefits of such transferred employees shall not be reduced. Employees who are subject to the rules of the State Personnel Board and who are transferred to the Georgia Vocational Rehabilitation Agency shall retain all existing rights under such rules. Accrued annual and sick leave shall be retained by said employees as employees of the Georgia Vocational Rehabilitation Agency. The Department of Labor shall be responsible for payment of the accrued Fair Labor Standards Act compensatory time possessed by said employees. Such accrued compensatory time shall be used by or paid to said employees prior to July 1, 2012.

(h)(1) The Georgia Vocational Rehabilitation Agency is the designated state unit for the vocational rehabilitation program.

(2) The Georgia Vocational Rehabilitation Agency shall conform to federal standards in all respects necessary for receiving federal grants and the director of the Georgia Vocational Rehabilitation Agency is authorized and empowered to effect such changes as may, from time to time, be necessary in order to comply with such standards.

(3) The Georgia Vocational Rehabilitation Agency shall take all necessary steps to secure at a minimum the same level of benefits provided pursuant to relevant federal statutes and appropriations received by the Division of Rehabilitation Services of the Department of Labor prior to June 30, 2012. The department shall also amend the state plan if necessary to meet federal funding requirements.

(4) The Georgia Vocational Rehabilitation Agency is authorized to employ, on a full or part-time basis, such medical, psychiatric, social work, supervisory, institutional, and other professional personnel and such clerical and other employees as may be necessary to

discharge the duties of the agency under this chapter. The agency is also authorized to contract for such professional services as may be necessary.

(5) Classified employees of the Georgia Vocational Rehabilitation Agency under this chapter shall in all instances be employed and dismissed in accordance with rules and regulations of the State Personnel Board.

(i) The Georgia Vocational Rehabilitation Agency shall succeed to all rules, regulations, policies, procedures, and administrative orders of the Department of Labor which are in effect on June 30, 2012, and which relate to the functions of the Division of Rehabilitation Services. Such rules, regulations, policies, procedures, and administrative orders shall remain in effect until amended, repealed, superseded, or nullified by proper authority or as otherwise provided by law.

(j) The rights, privileges, entitlements, and duties of parties to contracts, leases, agreements, and other transactions entered into before July 1, 2012, by the Department of Labor or the Division of Rehabilitation Services pertaining to the Division of Rehabilitation Services transferred to the Georgia Vocational Rehabilitation Agency by this chapter shall continue to exist; and none of these rights, privileges, entitlements, obligations, and duties are impaired or diminished by reason of the transfer of the functions to the Georgia Vocational Rehabilitation Agency. In all such instances, the Georgia Vocational Rehabilitation Agency shall be substituted for the Department of Labor or the Division of Rehabilitation Services, and the Georgia Vocational Rehabilitation Agency shall succeed to the rights, privileges, entitlements, and duties under such contracts, leases, agreements, and other transactions.

(k) The Georgia Vocational Rehabilitation Agency shall conform all service delivery regions to the state service delivery regions provided in subsection (a) of Code Section 50-4-7.

(l) The duties, powers, and authority to manage and operate the long-term acute care and the inpatient rehabilitation hospitals at the Roosevelt Warm Springs Institute for Rehabilitation shall be transferred to the Board of Regents of the University System of Georgia effective July 1, 2015, and the remaining duties, powers, and authority to manage and operate the Roosevelt Warm Springs Institute for Rehabilitation shall remain vested with the Georgia Vocational Rehabilitation Agency. (Code 1981, § 34-15-2, enacted by Ga. L. 2000, p. 1137, § 1; Ga. L. 2009, p. 453, § 2-17/HB 228; Ga. L. 2009, p. 745, § 2/SB 97; Code 1981, § 49-9-4, as redesignated by Ga. L. 2012, p. 303, § 1/HB 1146; Ga. L. 2012, p. 446, § 2-45/HB 642; Ga. L. 2013, p. 141, § 49/HB 79; Ga. L. 2015, p. 890, § 12/HB 263.)

The 2015 amendment, effective July 1, 2015, deleted "and the Roosevelt Warm Springs Institute for Rehabilitation" following "disability adjudication section" in paragraph (a)(1); and added subsection (l).

TITLE 50

STATE GOVERNMENT

VOLUME 38

Chap.

VOLUME 39

CHAPTER 1

GENERAL PROVISIONS

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2014, the enactment of Article 2 of Chapter 1 of Title 50 by Ga. L. 2014, p. 237, § 1/HB 930, was treated as impliedly repealed and superseded by Ga. L. 2014, p. 815, § 1/SB 206, codified at § 28-6-8, due to irreconcilable conflict.

CHAPTER 3

STATE FLAG, SEAL, AND OTHER SYMBOLS

ARTICLE 3

OTHER STATE SYMBOLS

50-3-86. Designation as Purple Heart state.

Georgia is designated as a "Purple Heart State," honoring our combat wounded veterans for their service and sacrifice in allowing the United States of America to maintain its sovereignty. (Code 1981, § 50-3-86, enacted by Ga. L. 2014, p. 758, § 2/SB 276.)

Effective date. — This Code section became effective July 1, 2014.

Cross references. — Purple Heart Day, § 1-4-21.

50-3-87. Official state mammal.

The white-tailed deer (*Odocoileus virginianus*) is designated as the official Georgia state mammal. (Code 1981, § 50-3-87, enacted by Ga. L. 2015, p. 129, § 1/HB 70.)

Effective date. — This Code section became effective July 1, 2015.

ARTICLE 5

HONORING REVEREND MARTIN LUTHER KING, JR.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2014, Code Section 50-3-105 as enacted by Ga. L. 2014, p. 839, § 1/HB 702 was redesignated as Code Section 50-3-110 and Article 5 was redesignated as Article 6.

Editor's notes. — This article became effective July 1, 2014.

50-3-105. Creation and placement of statue.

(a) There shall be placed upon the capitol grounds of the state capitol building or in another prominent place a statue of the Reverend Martin Luther King, Jr., subject to the availability of private funds for such purpose.

(b) Unless public safety concerns warrant postponement, such monument shall be procured and placed as soon as practicable but not before the state has been granted any intellectual property license necessary for purposes of this Code section. (Code 1981, § 50-3-105, enacted by Ga. L. 2014, p. 806, § 1/HB 1080.)

ARTICLE 6

RELIGIOUS LIBERTY MONUMENT

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2014, Code Section 50-3-105 as enacted by Ga. L. 2014, p. 839, § 1/HB 702 was redesignated as Code Section 50-3-110 and Article 5 was redesignated as Article 6.

Editor's notes. — This article became effective July 1, 2014.

50-3-110. Monument placement; committee established; use of public funds prohibited.

(a) Subject to the availability of funds, there shall be placed within the capitol building or grounds a historic granite monument depicting:

(1) The Preamble to the Georgia Constitution;

(2) The part of the Declaration of Independence which states that "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."; and

(3) The Ten Commandments.

(b)(1) Such monument shall be designed, procured, and placed by the Capitol Art Standards Commission, subject to final approval by a

monument committee composed of the following members of the General Assembly:

(A) Two members of the House of Representatives appointed by the Speaker of the House of Representatives;

(B) Two members of the Senate appointed by the Lieutenant Governor; and

(C) One member from each house of the General Assembly appointed by the Governor.

(2) The monument committee established pursuant to this subsection shall stand abolished upon placement of such monument.

(c) No public funds shall be expended for the design or procurement of such monument. Gifts and donations from private individuals, organizations, or foundations shall be accepted and expended by the Capitol Art Standards Commission to carry out the requirements of this Code section. (Code 1981, § 50-3-110, enacted by Ga. L. 2014, p. 839, § 1/HB 702.)

CHAPTER 5

DEPARTMENT OF ADMINISTRATIVE SERVICES

Article 3

State Purchasing

Part 1

General Authority, Duties, and Procedure

Sec.

Part 3

Small Business Assistance

ARTICLE 3

STATE PURCHASING

PART 1

GENERAL AUTHORITY, DUTIES, AND PROCEDURE

50-5-63. Green building standards; exclusive use of Georgia forest products in state construction contracts; exception where federal regulations conflict.

(a) As used in this Code section, the term:

(1) "Green building standards" means any system or tool created to rate the environmental efficiency and sustainability of the design, construction, operation, and maintenance of a building.

(2) "State building" means any facility owned, constructed, or acquired by the State of Georgia or any department, board, commission, or agency thereof, including state supported institutions of higher learning.

(b) No contract for the construction of, addition to, or repair or renovation of any facility, the cost of which is borne by this state or any department, agency, commission, authority, or political subdivision thereof, shall be let unless the contract contains a stipulation therein providing that the contractor or any subcontractor shall use exclusively Georgia forest products in the construction thereof, when forest products are to be used in such construction, addition, repair, or renovation, and if Georgia forest products are available.

(c) Whenever green building standards are applied to the new construction, operation, repair, or renovation of any state building, the entity applying the standards shall use only those green building standards that give certification credits equally to Georgia forest products grown, manufactured, and certified under the Sustainable Forestry Initiative, the American Tree Farm System, the Forest Stewardship Council, or other similar certifying organization approved by such entity.

(d) This Code section shall not apply when in conflict with federal rules and regulations concerning construction. (Ga. L. 1963, p. 552, §§ 1, 2; Ga. L. 2015, p. 265, § 1/HB 255.)

The 2015 amendment, effective July 1, 2015, added subsection (a); redesignated former subsection (a) as present subsection (b); in subsection (b), inserted "or renovation" near the beginning, substituted "this state" for "the state", and substituted "repair, or renovation" for "or repair" near the end; added subsection (c);

and redesignated former subsection (b) as present subsection (d). See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 265, § 2/HB 255, not codified by the General Assembly, provides, in part, that this Act shall apply to all contracts entered into on or after July 1, 2015.

50-5-67. Competitive bidding procedure; method of soliciting bids; required conditions for competitive sealed proposals; clarification; contract awards; negotiation of contracts; certificate of independent price determination; receiving electronic bids.

(a) Except as otherwise provided in this Code section, contracts exceeding $100,000.00 shall be awarded by competitive sealed bidding. If the total requirement of any given commodity will involve an expenditure in excess of $250,000.00, sealed bids shall be solicited by advertisement in the Georgia Procurement Registry established under subsection (b) of Code Section 50-5-69 and in addition may be solicited by advertisement in a newspaper of state-wide circulation at least once and at least 15 calendar days, except for construction projects which shall have 30 calendar days allowed, prior to the date fixed for opening of the bids and awarding of the contract. Other methods of advertisement, however, may be adopted by the Department of Administrative Services when such other methods are deemed more advantageous for the particular item to be purchased. In any event, it shall be the duty of the Department of Administrative Services to solicit sealed bids from reputable owners of supplies in all cases where the total requirement will exceed $100,000.00. When it appears that the use of competitive sealed bidding is either not justified or not advantageous to the state, a contract may be entered into by competitive sealed proposals, subject to the following conditions:

(1) This method of solicitation shall only be used after a written determination by the Department of Administrative Services that the use of competitive sealed bidding is not justified or is not advantageous to the state;

(2) Proposals shall be solicited through a request for proposals;

(3) Adequate public notice of the request for proposals shall be given in the same manner as provided for competitive sealed bidding;

(4) A register of proposals shall be prepared and made available for public inspection;

(5) The request for proposals shall state the relative importance of price and other evaluation factors;

(6) As provided in the request for proposals and under regulations to be developed by the Department of Administrative Services, discussions may be conducted with qualified offerors who submit

proposals determined to be reasonably susceptible of being selected for award, for the purpose of clarification to assure full understanding of and responsiveness to the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and clarification of proposals. After such clarifications, revisions may be permitted to technical proposals and price proposals prior to award for the purpose of obtaining best and final offers. The Department of Administrative Services is authorized to solicit multiple revisions to price proposals for the purpose of obtaining the most advantageous proposal to the state. In conducting discussions or soliciting any revisions, there shall be no disclosure of any information contained in proposals submitted by competing offerors. However, this prohibition on disclosure of information shall not prohibit the Department of Administrative Services from disclosing to competing offerors any preliminary rankings and scores of competing offerors' proposals during the course of any negotiations or revisions of proposals other than with respect to the procurement of construction contracts; and

(7) The award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the state, taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made.

(b)(1) Except as otherwise provided for in this part, all contracts for the purchase of supplies, materials, equipment, or services made under this part, other than professional and personal employment services or the purchase of new automobiles manufactured by a company that constructs or assembles within this state any light duty motor vehicle with a gross vehicle weight rating of under 12,500 pounds, shall, wherever possible, be based upon competitive bids and shall be awarded to the lowest responsible bidder, taking into consideration the quality of the articles to be supplied and conformity with the specifications which have been established and prescribed, the purposes for which the articles are required, the discount allowed for prompt payment, the transportation charges, and the date or dates of delivery specified in the bid and any other cost affecting the total cost of ownership during the life cycle of the supplies, materials, equipment, or services as specified in the solicitation document. Competitive bids on such contracts shall be received in accordance with rules and regulations to be adopted by the commissioner of administrative services which shall prescribe, among other things, the manner, time, and places for proper advertisement for the bids, indicating the time and place when the bids will be received; the article for which the bid shall be submitted and the specification

prescribed for the article; the amount or number of the articles desired and for which the bids are to be made; and the amount, if any, of bonds or certified checks to accompany the bids. Any and all bids so received may be rejected.

(2)(A) As used in this paragraph, the term:

(i) "Commercial use applications" means self-propelled, self-powered, or pull-type equipment and machinery, including diesel engines. The term shall not include motor vehicles requiring registration and certificate of title or equipment that is considered consumer goods, as that term is defined in Code Section 11-9-102.

(ii) "Multiple award schedule contract" means a contract that allows multiple vendors to be awarded a state contract for goods or services by providing catalogues of equipment and attachments to eligible purchasers including state agencies, departments, institutions, public school districts, and political subdivisions. Multiple award schedule contract bids shall be evaluated based upon a variety of factors, including but not limited to discounts, total life costs, service, warranty, machine performance and durability, resale value, product support, and past vendor performance. Multiple award schedule contracts shall allow multiple vendors to bid and be awarded a contract based upon the value of their products and demonstrated results in competitive pricing, product updates, transparency, administrative savings, expedited procurement, and flexibility for state purchasers.

(B) When the commissioner of administrative services determines it to be in the best interest of the state, a multiple award schedule contract may be let for the purchase of equipment used for commercial use applications. All bidders for contracts for the purchase of equipment for commercial use applications shall be required to submit a complete bid package and be the authorized dealer or vendor for a leading manufacturer of equipment used for commercial use applications. Bidders may add additional equipment with a guaranteed minimum discount off the manufacturer's suggested consumer list price in the bid in order to increase the options available to the state.

(C) Nothing in this paragraph shall limit multiple award schedule contracts to commercial use applications.

(c)(1)(A) When bids received pursuant to this part are unreasonable or unacceptable as to terms and conditions, are noncompetitive, or the lowest responsible bid exceeds available funds and it is determined in writing by the Department of Administrative Ser-

vices that time or other circumstances will not permit or justify the delay required to resolicit competitive bids, a contract may be negotiated pursuant to this Code section, provided that each responsible bidder who submitted such a bid under the original solicitation is notified of the determination and is given a reasonable opportunity to negotiate. In cases where the bids received are noncompetitive or the lowest responsible bid exceeds available funds, the negotiated price shall be lower than the lowest rejected bid of any responsible bidder under the original solicitation.

(B) With respect to procurement for construction contracts, if the bid from the lowest responsible and responsive bidder exceeds the funds budgeted for the contract, a contract may be negotiated with such apparent low bidder to obtain a contract price within the budgeted amount. Such negotiations may include changes in the scope of work and other bid requirements.

(2) When proposals received pursuant to this part are unreasonable or unacceptable as to terms and conditions, are noncompetitive, or the lowest responsible proposal exceeds available funds and it is determined in writing by the Department of Administrative Services that time or other circumstances will not permit or justify the delay required to resolicit competitive proposals, a contract may be negotiated pursuant to this Code section, provided that each responsible offeror who submitted such a proposal under the original solicitation is notified of the determination and is given a reasonable opportunity to negotiate. In cases where the proposals received are noncompetitive or the lowest responsible proposal exceeds available funds, any contract award made pursuant to this paragraph shall be made to the offeror whose negotiated proposal is most advantageous to the state according to the evaluation criteria in the request for proposals rather than to the offeror whose negotiated proposal offers the lowest price, provided that the negotiated price of the most advantageous proposal is lower than the price of the rejected responsible proposal with the lowest price under the original solicitation.

(d)(1) Except as otherwise provided for in this part, the Department of Administrative Services shall publish in print or electronically, prior to award or letting of the contracts, notice of its intent to award a contract to the successful bidder or offeror on public display in a conspicuous place in the department's office, on the Georgia Procurement Registry, or both so that it may be easily seen by the public. The public notice on public display shall also state the price or the amount for which the contract may be awarded, the commodities or services to be covered by the contract which may be awarded, and the names of all persons whose bids, offers, or proposals were rejected by the department, together with a statement giving the reasons for the rejection.

(2) Every bid or proposal conforming to the terms of the advertisement provided for in this Code section, together with the name of the bidder, shall be recorded, and all such records with the name of the successful bidder or offeror indicated thereon shall, within one day after the issuance of the department's public notice of intent to award to the successful bidder or offeror, be subject to public inspection upon request.

(3) The Department of Administrative Services shall also, within one day after the award or letting of the contract, publish the name of the successful bidder or offeror on public display in a conspicuous place in the department's office or on the Georgia Procurement Registry so that it may be easily seen by the public. The public notice on public display shall also show the price or the amount for which the contract was let and the commodities covered by the contract. The Department of Administrative Services shall also, within one day after the award or letting of the contract, publish on public display the names of all persons whose bids, offers, or proposals were rejected by it, together with a statement giving the reasons for such rejection.

(4) The Department of Administrative Services shall canvass the bids, offers, or proposals and award the contract according to the terms of this part. The Department of Administrative Services shall prepare a register of bids, offers, or proposals which will become available for public inspection upon request within one day after the issuance of the department's public notice of intent to award to the successful bidder or offeror. The bids, offers, or proposals shall not be subject to public disclosure until after the issuance of the public notice of intent to award a contract to the successful bidder or offeror except that audited financial statements not otherwise publicly available but required to be submitted in the bid, offer, or proposal shall not be subject to public disclosure.

(5) Records related to the competitive bidding and proposal process which, if disclosed prior to the issuance of the public notice of intent to award would undermine the public purpose of obtaining the best value for this state, shall not be subject to public disclosure until after the department's issuance of its public notice of intent to award a contract to the successful bidder or offeror. Such records include but are not limited to cost estimates, bids, proposals, evaluation criteria, vendor evaluations, negotiation documents, offers and counter-offers, and records revealing preparation for the procurement.

(6) A proper bond for the faithful performance of any contract shall be required of the successful bidder or offeror in the discretion of the Department of Administrative Services. After the contracts have been awarded, the Department of Administrative Services shall certify to the offices, agencies, departments, boards, bureaus, com-

missions, institutions, or other entities of the state the sources of the supplies and the contract price of the various supplies, materials, services, and equipment so contracted for.

(e) On all bids or proposals received or solicited by the Department of Administrative Services, by any office, agency, department, board, bureau, commission, institution, or other entity of the state or by any person in behalf of any office, agency, department, board, bureau, commission, institution, or other entity of the state except in cases provided for in Code Section 50-5-58, the following certificate of independent price determination shall be used:

"I certify that this bid, offer, or proposal is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a bid, offer, or proposal for the same materials, supplies, services, or equipment and is in all respects fair and without collusion or fraud. I understand collusive bidding is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards. I agree to abide by all conditions of this bid, offer, or proposal and certify that I am authorized to sign this bid, offer, or proposal for the bidder or offeror."

(f) Notwithstanding any other provision of this article, the commissioner of administrative services is authorized to promulgate rules and regulations to govern auctions conducted by state agencies in which vendors' prices are made public during the bidding process to enable the state agency or agencies to seek a lower price. This auction bidding process will continue until the lowest price is obtained within the auction's time limit. This auction bidding process shall not be used to procure construction services or for any contract for goods or services valued at less than $100,000.00.

(g) Any reference in this article to sealed bids or sealed proposals shall not preclude the Department of Administrative Services from receiving bids and proposals by way of the Internet or other electronic means or authorizing state agencies from receiving bids and proposals by way of the Internet or other electronic means; provided, however, any bids or proposals received by any state agency by way of any electronic means must comply with security standards established by the Georgia Technology Authority. (Ga. L. 1937, p. 503, § 6; Ga. L. 1939, p. 160, § 3; Ga. L. 1978, p. 1054, §§ 1, 2; Ga. L. 1979, p. 659, §§ 4, 5; Ga. L. 1980, p. 90, § 2; Ga. L. 1991, p. 1380, § 1; Ga. L. 1996, p. 885, § 5; Ga. L. 1998, p. 1372, § 1; Ga. L. 2001, p. 792, § 1; Ga. L. 2003, p. 605, § 1; Ga. L. 2005, p. 117, § 13/HB 312; Ga. L. 2008, p. 230, §§ 3, 4/SB 175; Ga. L. 2010, p. 838, § 10/SB 388; Ga. L. 2012, p. 1178, § 1/SB 492; Ga. L. 2012, p. 1350, § 8B/HB 1067; Ga. L. 2015, p. 1284, § 2/HB 259.)

The 2015 amendment, effective July 1, 2015, in the first sentence of paragraph (b)(1) substituted "purchase" for "purchases" near the beginning, inserted "made under this part," and substituted "or the purchase of new automobiles manufactured by a company that constructs or assembles within this state any light duty motor vehicle with a gross vehicle weight rating of under 12,500 pounds," for "made under this part" near the middle.

Editor's notes. — Ga. L. 2015, p. 1284, § 1/HB 259, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Business Act.'"

50-5-69. Purchases without competitive bidding; central bid registry; procurement cards; rules and regulations; applicability to emergency purchases; Purchasing Advisory Council.

(a) If the needed supplies, materials, equipment, or service can reasonably be expected to be acquired for less than $25,000.00 and is not available on state contracts or through statutorily required sources, the purchase may be effectuated without competitive bidding. The commissioner of administrative services may by rule and regulation authorize the various offices, agencies, departments, boards, bureaus, commissions, institutions, authorities, or other entities of the state to make purchases in their own behalf and may provide the circumstances and conditions under which such purchases may be effected. In order to assist and advise the commissioner of administrative services in making determinations to allow offices, agencies, departments, boards, bureaus, commissions, institutions, authorities, or other entities of the state to make purchases in their own behalf, there is created a Purchasing Advisory Council consisting of the executive director of the Georgia Technology Authority or his or her designee; the director of the Office of Planning and Budget or his or her designee; the chancellor of the University System of Georgia or his or her designee; the commissioner of the Technical College System of Georgia or his or her designee; the commissioner of transportation or his or her designee; the Secretary of State or his or her designee; the commissioner of human services or his or her designee; the commissioner of community health or his or her designee; the commissioner of public health or his or her designee; the commissioner of behavioral health and developmental disabilities or his or her designee; and one member to be appointed by the Governor. The commissioner of administrative services shall promulgate the necessary rules and regulations governing meetings of such council and the method and manner in which such council will assist and advise the commissioner of administrative services.

(b) The department shall establish a central bid registry to advertise the various procurement and bid opportunities of state government. Such central bid registry shall be entitled the Georgia Procurement Registry and shall operate in accordance with appropriate rules and regulations applicable to the department's responsibility to manage the

state's procurement system. It shall be the responsibility of each agency, department, board, commission, authority, and council to report to the department its bid opportunities in a manner prescribed by the Department of Administrative Services. The commissioner of administrative services is authorized and directed to promulgate rules and regulations to carry out this responsibility and shall determine the most economical method to conduct public notification of such bid opportunities.

(c) The Department of Administrative Services is authorized to permit departments, institutions, and agencies of state government to utilize a procurement card that will electronically pay and monitor payments by state institutions pursuant to subsection (a) of this Code section subject to approval of the State Depository Board pursuant to the State Depository Board's authority to prescribe cash management policies and procedures for state agencies under Code Section 50-17-51. All purchases made through procurement cards shall be included on a monthly summary report to be prepared by each state department, institution, and agency in a form to be approved by the Department of Administrative Services.

(d) The commissioner of administrative services shall promulgate rules and regulations necessary to carry out the intent of this Code section.

(e) Nothing in this Code section shall apply to or affect the laws, rules, and regulations governing emergency purchases.

(f) The Division of Family and Children Services of the Department of Human Services may enter into contracts for the purchase of or may purchase placements for children in the care or custody of the Division of Family and Children Services of the Department of Human Services without competitive bidding pursuant to the oversight and authority of the director of the Division of Family and Children Services of the Department of Human Services. (Ga. L. 1976, p. 752, § 1; Ga. L. 1980, p. 90, § 4; Ga. L. 1983, p. 520, § 1; Ga. L. 1996, p. 885, § 6; Ga. L. 1998, p. 1372, § 2; Ga. L. 2001, p. 792, § 2; Ga. L. 2005, p. 117, § 13A/HB 312; Ga. L. 2009, p. 453, § 2-4/HB 228; Ga. L. 2010, p. 286, § 21/SB 244; Ga. L. 2011, p. 705, § 5-28/HB 214; Ga. L. 2012, p. 760, § 1-1/HB 863; Ga. L. 2012, p. 775, § 50/HB 942; Ga. L. 2015, p. 552, § 18/SB 138; Ga. L. 2015, p. 1284, § 3/HB 259.)

The 2015 amendments. — The first 2015 amendment, effective July 1, 2015, added subsection (f). The second 2015 amendment, effective July 1, 2015, substituted "$25,000.00" for "$5,000.00" in the middle of the first sentence of subsection (a). See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 1284, § 1/HB 259, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Business Act.'"

Ga. L. 2015, p. 1284, § 7/HB 259, not codified by the General Assembly, pro-

vides: "The amendment made by Section 3 of this Act shall apply to Code Section 50-5-69 as it exists on July 1, 2015."

Part 3

Small Business Assistance

50-5-120. Short title.

This part shall be known and may be cited as "The Small Business Assistance Act of 2015." (Ga. L. 1975, p. 1619, § 1; Ga. L. 2012, p. 760, § 1-2/HB 863; Ga. L. 2015, p. 1284, § 4/HB 259.)

The 2015 amendment, effective July 1, 2015, substituted "2015" for "2012" at the end of this Code section.

Editor's notes. — Ga. L. 2015, p. 1284, § 1/HB 259, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Business Act.'"

50-5-121. Definitions.

For the purposes of this part, the term:

(1) "Department" means the Department of Administrative Services.

(2) "Georgia resident business" means any business that regularly maintains a place from which business is physically conducted in Georgia for at least one year prior to any bid or proposal to the state or a new business that is domiciled in Georgia and which regularly maintains a place from which business is physically conducted in Georgia; provided, however, that a place from which business is conducted shall not include a post office box, a leased private mailbox, site trailer, or temporary structure.

(3) "Small business" means a business which is independently owned and operated. In addition, such business must have either fewer than 300 employees or less than $30 million in gross receipts per year. (Ga. L. 1975, p. 1619, § 3; Ga. L. 1982, p. 3, § 50; Ga. L. 2012, p. 760, § 1-3/HB 863; Ga. L. 2015, p. 1284, § 5/HB 259.)

The 2015 amendment, effective July 1, 2015, deleted "Georgia resident" preceding "business" near the beginning of paragraph (3).

Editor's notes. — Ga. L. 2015, p. 1284, § 1/HB 259, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Business Act.'"

50-5-122. Legislative intent.

(a) The legislative intent of this part is declared to be as follows: The most important element of the American economic system of private enterprise is free and vigorous competition. Only through the existence of free and vigorous competition can free entry into business and opportunities for personal initiative and individual achievement be assured. The preservation and expansion of such competition is essential for our economic well-being. In order to encourage such competition it is the declared policy of the state to ensure that a fair proportion of the total purchases and contracts or subcontracts for property, commodities, and services for the state be placed with Georgia resident businesses and small businesses so long as the commodities and services of small businesses are competitive as to price and quality.

(b) The department shall be authorized to effectuate the legislative intent as set forth in this Code section. (Ga. L. 1975, p. 1619, § 2; Ga. L. 2015, p. 1284, § 6/HB 259.)

The 2015 amendment, effective July 1, 2015, designated the existing provisions as subsection (a); inserted "Georgia resident businesses and" near the middle of the last sentence of subsection (a); and added subsection (b).

Editor's notes. — Ga. L. 2015, p. 1284, § 1/HB 259, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Business Act.'"

CHAPTER 5B

STATE ACCOUNTING OFFICE

Article 1
General Provisions

ARTICLE 1
GENERAL PROVISIONS

50-5B-2. Administrative units; directors; employees.

(a) The state accounting officer shall establish such units within the State Accounting Office as he or she deems proper for its administration, including The Council of Superior Court Judges of Georgia and the Prosecuting Attorneys' Council of the State of Georgia as separate units with distinct accounting functions, and shall designate persons to be

directors and assistant directors of such units to exercise such authority as he or she may delegate to them in writing.

(b) The state accounting officer shall have the authority, within budgetary limitations, to employ as many persons as he or she deems necessary for the administration of the office and for the discharge of the duties of the office. The state accounting officer shall issue all necessary directions, instructions, orders, and rules applicable to such persons. He or she shall have authority, as he or she deems proper, to employ, assign, compensate, and discharge employees of the office within the limitations of the office's appropriation, the requirements of the state system of personnel administration provided for in Chapter 20 of Title 45, and restrictions set forth by law. (Code 1981, § 50-5B-2, enacted by Ga. L. 2005, p. 694, § 1/HB 293; Ga. L. 2008, p. 577, § 21/SB 396; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-100/HB 642; Ga. L. 2014, p. 136, § 1-3/HB 291; Ga. L. 2015, p. 325, § 18/HB 246.)

The 2014 amendment, effective July 1, 2014, added present subsection (b) and redesignated former subsection (b) as present subsection (c).

The 2015 amendment, effective July 1, 2015, deleted former subsection (b), which read: "The Georgia State Board of Accountancy shall be a division within the State Accounting Office. The state accounting officer shall appoint an executive director of the Georgia State Board of Accountancy. Such executive director shall have such powers and duties as provided under Chapter 3 of Title 43." and redesignated former subsection (c) as present subsection (b).

Law reviews. — For annual survey on administrative law, see 66 Mercer L. Rev. 1 (2014).

CHAPTER 5C

PARTNERSHIP FOR PUBLIC FACILITIES AND INFRASTRUCTURE

Effective date. — This chapter became effective May 5, 2015.

Editor's notes. — Ga. L. 2015, p. 406, § 1/SB 59, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Partnership for Public Facilities and Infrastructure Act.'"

50-5C-1. Definitions.

As used in this chapter, the term:

(1) "Affected local jurisdiction" means any county, municipality, or school district in which all or a portion of a qualifying project is located.

(2) "Comprehensive agreement" means the written agreement between the private entity and the responsible public entity required by Code Section 50-5C-5.

(3) "Develop" or "development" means to plan, design, develop, finance, lease, acquire, install, construct, operate, maintain, or expand.

(4) "Person" means an individual, corporation, partnership, trust, association, or other legal entity.

(5) "Private entity" means any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, or other business entity.

(6) "Public entity" means a department, agency, board, bureau, commission, authority, or instrumentality of the State of Georgia, including the Board of Regents of the University System of Georgia as well as a local government or local authority.

(7) "Qualifying project" means any project submitted by a private entity as an unsolicited proposal in accordance with this chapter and subsequently reviewed and approved by a responsible public entity, within its sole discretion, as meeting a public purpose or public need. This term shall not include and shall have no application to any project involving:

(A) The generation of electric energy for sale pursuant to Chapter 3 of Title 46;

(B) Communications services pursuant to Articles 4 and 7 of Chapter 5 of Title 46;

(C) Cable and video services pursuant to Chapter 76 of Title 36; or

(D) Water reservoir projects as defined in paragraph (10) of Code Section 12-5-471, which shall be governed by Article 4 of Chapter 91 of Title 36.

(8) "Responsible public entity" means a public entity that has the power to contract with a private entity to develop an identified qualifying project. For any unsolicited proposal for a project at one or more institutions of the University System of Georgia, the responsible public entity shall be the Board of Regents of the University System of Georgia or its designees. For any unsolicited proposal for a project for one or more state government entities, other than an institution of the University System of Georgia, the responsible public entity shall be the State Properties Commission.

(9) "Revenue" means all revenues, income, earnings, user fees, lease payments, or other service payments arising out of or in connection with supporting the development or operation of a qualifying project.

(10) "Unsolicited proposal" means a written proposal for a qualifying project that is received by a responsible public entity and is not in response to any request for proposal issued by a responsible public entity. (Code 1981, § 50-5C-1, enacted by Ga. L. 2015, p. 406, § 3/SB 59.)

50-5C-2. Authority to develop guidelines.

For any qualifying project undertaken by the State Properties Commission, the Georgia State Financing and Investment Commission shall be solely authorized to develop guidelines for this process. For any qualifying project undertaken by the University System of Georgia, the Board of Regents of the University System of Georgia shall be solely authorized to develop guidelines for this process. (Code 1981, § 50-5C-2, enacted by Ga. L. 2015, p. 406, § 3/SB 59.)

50-5C-3. Unsolicited proposals by private entities; requirements.

(a) Between May 1 and June 30 of each year, a private entity may submit an unsolicited proposal for a project to the responsible public entity for review and determination as a qualifying project in accordance with the guidelines established by Code Section 50-5C-2. Any such unsolicited proposal shall be accompanied by the following material and information:

(1) A project description, including the location of the project, the conceptual design of such facility or facilities, and a conceptual plan for the provision of services or technology infrastructure;

(2) A feasibility statement that includes:

(A) The method by which the private entity proposes to secure any necessary property interests required for the project;

(B) A list of all permits and approvals required for the project from local, state, or federal agencies; and

(C) A list of public utility facilities, if any, that will be crossed by the project and a statement of the plans of the private entity to accommodate such crossings;

(3) A schedule for the initiation and completion of the project to include the proposed major responsibilities and timeline for activities to be performed by both the public and private entity as well as a proposed schedule for obtaining the permits and approvals required in subparagraph (B) of paragraph (2) of this subsection;

(4) A financial plan setting forth the private entity's general plans for financing the project, including the sources of the private entity's funds and identification of any dedicated revenue source or proposed debt or equity investment on behalf of the private entity; a description of user fees, lease payments, and other service payments over the term of the comprehensive agreement pursuant to Code Section 50-5C-5; and the methodology and circumstances for changes to such user fees, lease payments, and other service payments over time;

(5) A business case statement that shall include a basic description of any direct and indirect benefits that the private entity can provide in delivering the project, including relevant cost, quality, methodology, and process for identifying the project and time frame data;

(6) The names and addresses of the persons who may be contacted for further information concerning the unsolicited proposal; and

(7) Such additional material and information as the responsible public entity may reasonably request.

(b) For any unsolicited proposal for the development of a project received by a responsible public entity, the private entity shall reimburse the responsible public entity for the actual costs incurred to process, review, and evaluate the unsolicited proposal, including, without limitation, reasonable attorney's fees and fees for financial, technical, and other necessary advisers or consultants.

(c) Any private entity submitting an unsolicited proposal under subsection (a) of this Code section to a responsible public entity shall also notify each affected local jurisdiction by furnishing a copy of its unsolicited proposal to each affected local jurisdiction.

(d) Each affected local jurisdiction that is not a responsible public entity for the respective project may, within 45 days after receiving such notice, submit any comments regarding the unsolicited proposal it may have in writing to the responsible public entity and indicate whether the project is compatible with local plans and budgets. A project shall be

consistent with zoning and land use regulations of the responsible public entity and each affected local jurisdiction.

(e) The responsible public entity may reject any proposal or unsolicited proposal at any time and shall not be required to provide a reason for its denial. If the responsible public entity rejects a proposal or unsolicited proposal submitted by a private entity, it shall have no obligation to return the proposal, unsolicited proposal, or any related materials following such rejection.

(f) A private entity assumes all risks in submission of a proposal or unsolicited proposal in accordance with subsections (a) and (b) of this Code section, and a responsible public entity shall not incur any obligation to reimburse a private entity for any costs, damages, or loss of intellectual property incurred by a private entity in the creation, development, or submission of a proposal or unsolicited proposal for a qualifying project. (Code 1981, § 50-5C-3, enacted by Ga. L. 2015, p. 406, § 3/SB 59.)

50-5C-4. Approval of unsolicited proposals; responsibilities of approving public entity; factors for consideration; cancelation of proposal request; loans.

(a) The responsible public entity may approve the project in an unsolicited proposal submitted by a private entity pursuant to Code Section 50-5C-3 as a qualifying project. Determination by the responsible public entity of a qualifying project shall not bind the responsible public entity or the private entity to proceed with the qualifying project.

(b) Upon the responsible public entity's determination of a qualifying project as provided in subsection (a) of this Code section, the responsible public entity shall:

(1) Seek competing proposals for the qualifying project by issuing a request for proposals for not less than 90 days; and

(2) Review all proposals submitted in response to the request for proposals based on the criteria established in the request for proposals.

(c) When the time for receiving proposals expires, the responsible public entity shall first rank the proposals in accordance with the factors set forth in the request for proposal or invitation for bids. The responsible public entity shall not be required to select the proposal with the lowest price offer, but it may consider price as one of various factors in evaluating the proposals received in response to the request for proposals for a qualifying project. Factors that may be considered include:

(1) The proposed cost of the qualifying project;

(2) The general reputation, industry experience, and financial capacity of the private entity;

(3) The proposed design of the qualifying project;

(4) The eligibility of the facility for accelerated selection, review, and documentation timelines under the responsible public entity's guidelines;

(5) Benefits to the public;

(6) The private entity's compliance with a minority business enterprise participation plan;

(7) The private entity's plans to employ local contractors and residents; and

(8) Other criteria that the responsible public entity deems appropriate.

(d) After ranking the proposals, the responsible public entity shall begin negotiations with the first ranked private entity. If the responsible public entity and the first ranked private entity do not reach a comprehensive agreement or interim agreement, then the responsible public entity may conduct negotiations with the next ranked private entity. This process shall continue until the responsible public entity either voluntarily abandons the process or executes a comprehensive agreement or interim agreement with a private entity.

(e) At any time during the process outlined in this Code section but before full execution of a comprehensive agreement, the responsible public entity may, without liability to any private entity or third party, cancel its request for proposals or reject all proposals received in response to its request for proposals, including the unsolicited proposal, for any reason whatsoever.

(f) Nothing in this chapter shall enlarge, diminish, or affect the authority, if any, otherwise possessed by the responsible public entity to take action that would impact the debt capacity of the State of Georgia. The credit of this state shall not be pledged or loaned to any private entity. The responsible public entity shall not loan money to the private entity in order to finance all or a portion of the qualifying project. All power or authority granted by this chapter to public entities shall be in addition to and supplemental to, and not in substitution for, the powers conferred by any other general, special, or local law. The limitations imposed by this chapter shall not affect the powers conferred by any other general, special, or local law and shall apply only to the extent that a public entity elects to proceed under this chapter. A multiyear lease entered into by the state as lessee under this Code section which

is not terminable at the end of each fiscal year during the term of the lease shall be subject to and comply with the provisions of Code Section 50-16-41, specifically including compliance with any multiyear contract value authority adopted by the Georgia State Financing and Investment Commission for each fiscal year. (Code 1981, § 50-5C-4, enacted by Ga. L. 2015, p. 406, § 3/SB 59.)

50-5C-5. Requirements of comprehensive agreement.

(a) The comprehensive agreement entered into between the responsible public entity and the private entity selected in accordance with this chapter shall include:

(1) A thorough description of the duties of each party in the completion and operation of the qualifying project;

(2) Dates and schedules for the completion of the qualifying project;

(3) Any user fees, lease payments, or service payments as may be established by agreement of the parties, as well as any process for changing such fees or payments throughout the term of the agreement, and a copy of any service contract;

(4) Any reimbursements to be paid to the responsible public entity for services provided by the responsible public entity;

(5) A process for the review of plans and specifications for the qualifying project by the responsible public entity and approval by the responsible public entity if the plans and specifications conform to reasonable standards acceptable to the responsible public entity;

(6) A process for the periodic and final inspection of the qualifying project by the responsible public entity to ensure that the private entity's activities are in accordance with the provisions of the comprehensive agreement;

(7) Delivery of performance and payment bonds in the amounts required in Code Sections 13-10-40, 13-10-41, and 13-10-60 and in a form acceptable to the responsible public entity for those components of the qualifying project that involve construction, and bonds, letters of credit, or other forms of security acceptable to the responsible public entity for other phases and components of the development of the qualifying project;

(8) Submission of a policy or policies of public liability insurance, copies of which shall be filed with the responsible public entity accompanied by proofs of coverage, or self-insurance, each in form and amount satisfactory to the responsible public entity and reasonably sufficient to ensure coverage of tort liability to the public and

employees and to enable the continued operation of the qualifying project;

(9) A process for monitoring the practices of the private entity by the responsible public entity to ensure that the qualifying project is properly maintained;

(10) The filing of appropriate financial statements to the responsible public entity on a periodic basis; and

(11) Provisions governing the rights and responsibilities of the responsible public entity and the private entity in the event the comprehensive agreement is terminated or there is a material default by the private entity, including conditions governing assumption of the duties and responsibilities of the private entity by the responsible public entity and the transfer or purchase of property or other interests of the private entity by the responsible public entity, including provisions compliant with state constitutional limitations on public debt.

(b) The comprehensive agreement may include such other terms and conditions that the responsible public entity determines will serve the public purpose of this chapter and to which the private entity and the responsible public entity mutually agree, including, without limitation, provisions regarding unavoidable delays and provisions where the authority and duties of the private entity under this chapter shall cease, and the qualifying project is dedicated to the responsible public entity.

(c) Any changes in the terms of the comprehensive agreement, as may be agreed upon by the parties from time to time, shall be added to the comprehensive agreement by written amendment.

(d) The comprehensive agreement may provide for the development of phases or segments of the qualifying project. (Code 1981, § 50-5C-5, enacted by Ga. L. 2015, p. 406, § 3/SB 59.)

50-5C-6. Termination for default; assumption of responsibilities and duties; eminent domain power not delegated; other powers.

(a) In the event of a material default by the private entity, the responsible public entity may terminate, with cause, the comprehensive agreement and exercise any other rights and remedies that may be available to it at law or in equity, including, but not limited to, claims under the maintenance, performance, or payment bonds; other forms of security; or letters of credit required by Code Section 50-5C-5 in accordance with Code Sections 13-10-40 through 13-10-65.

(b) The responsible public entity may elect to assume the responsibilities and duties of the private entity of the qualifying project, and in such case, it shall succeed to all of the right, title, and interest in such qualifying project.

(c) The power of eminent domain shall not be delegated to any private entity with respect to any project commenced or proposed pursuant to this chapter. Any responsible public entity having the power of condemnation under state law may exercise such power of condemnation to acquire the qualifying project in the event of a material default by the private entity. Any person who has perfected a security interest in the qualifying project may participate in the condemnation proceedings with the standing of a property owner.

(d) In the event the responsible public entity elects to take over a qualifying project pursuant to subsection (b) of this Code section, the responsible public entity may develop the qualifying project, impose user fees, and impose and collect lease payments for the use thereof. (Code 1981, § 50-5C-6, enacted by Ga. L. 2015, p. 406, § 3/SB 59.)

50-5C-7. Supplemental authority.

All power or authority granted by this chapter to public entities shall be in addition and supplemental to, and not in substitution for, the powers conferred by any other general or special law. The limitations imposed by this chapter shall not affect the powers conferred by any other general, special, or local law and shall apply only to the extent that a public entity elects to proceed under this chapter. (Code 1981, § 50-5C-7, enacted by Ga. L. 2015, p. 406, § 3/SB 59.)

50-5C-8. No waiver of sovereign immunity.

Nothing in this chapter shall be construed as or deemed a waiver of the sovereign or official immunity of any responsible public entity or any officer or employee thereof with respect to the participation in, or approval of, all or any part of the qualifying project or its operation, including, but not limited to, interconnection of the qualifying project with any other infrastructure or project. (Code 1981, § 50-5C-8, enacted by Ga. L. 2015, p. 406, § 3/SB 59.)

50-5C-9. Authority of law enforcement officers.

Any law enforcement officers of the public entity shall have the same powers and jurisdiction within the portion of such qualifying project as they have in their respective areas of jurisdiction, and such law enforcement officers shall have access to the qualifying project at any time for the purpose of exercising such powers and jurisdiction. (Code 1981, § 50-5C-9, enacted by Ga. L. 2015, p. 406, § 3/SB 59.)

50-5C-10. Exception for compliance with chapter.

(a) Responsible public entities that proceed with procurement pursuant to competitive sealed bidding pursuant to Code Section 50-5-67, or any other purchasing options available to them under current law, shall not be required to comply with this chapter.

(b) Nothing in this chapter shall apply to or affect the State Transportation Board, the Department of Transportation, or the State Road and Tollway Authority, or any project thereof.

(c) Nothing in this chapter shall abrogate the obligations of a responsible public entity or private entity to comply with the public meetings requirement in accordance with Chapter 14 of this title or to disclose public information in accordance with Article 4 of Chapter 18 of this title. (Code 1981, § 50-5C-10, enacted by Ga. L. 2015, p. 406, § 3/SB 59.)

CHAPTER 7

DEPARTMENT OF ECONOMIC DEVELOPMENT

Article 1

General Provisions

Article 8

State Workforce Development Board

ARTICLE 1

GENERAL PROVISIONS

50-7-11.1. Authority to administer and disperse funds.

In the event the board accepts grants and gifts from the federal government pursuant to Code Section 50-7-10, the board shall also have the authority to administer and disperse those funds for any and all purposes of this article in a manner consistent with the terms of the grant or gift and other applicable laws, the provisions of Code Section 50-7-11 notwithstanding. Regarding the administration, dispersal, and use of any federal funds, or the administration of programs created by

the Workforce Investment Act or its amendments, the board shall administer, disperse, and use those funds, and administer those programs in compliance with governing federal laws, the state plan, and regulations and policies promulgated by the State Workforce Development Board and the Governor. (Code 1981, § 50-7-11.1, enacted by Ga. L. 2013, p. 685, § 2/SB 177; Ga. L. 2015, p. 1084, § 2/HB 348.)

The 2015 amendment, effective July 1, 2015, added the second sentence in this Code section.

50-7-17. New Georgia Foundation for Tourism; definitions; marketing program.

(a) **Statement of policy and short title.** The General Assembly finds that it is in the state's interest to present a cohesive and vibrant message for the promotion of tourism in Georgia. This Code section, therefore, shall be known and may be cited as the "New Georgia Foundation for Tourism Act."

(b) **Definitions.** As used in this Code section, the term:

(1) "Agency" means any officer, board, department, agency, commission, bureau, authority, public corporation, instrumentality, or other entity of state government when engaged in an activity conducive to marketing which promotes tourism.

(2) "Coordinate" and "coordination" include issuing rules, policies, standards, definitions, specifications, coordination, and other guidance and direction.

(3) "Department" means the Department of Economic Development.

(4) "Implement" and "implementation" include planning, writing, drafting, designing, study, and market analysis; solicitation and acceptance of gifts, contributions, and cooperation; contracting, procurement, retention of consultants, outsourcing, similar activities, and other activities within the ordinary meaning of the term in this context.

(5) "Market" and "marketing" include promotion, advertising, signage, public relations, press relations, branding, and use of a "look"; creation, use, and licensing of trademark, copyright, and other intellectual property; discounts; and other activities of similar nature or within the term as it is commonly understood.

(c) **Establishment of State-wide Tourism Marketing Program.**

(1) **Generally.** For promotion of tourism in Georgia, the department may establish, implement, and provide for implementing a

State-wide Tourism Marketing Program, with common and consistent features for implementation by the department and agencies. Within the State-wide Tourism Marketing Program, the department may establish or authorize various themes and component programs, but such themes and component programs must have common and consistent features with the State-wide Tourism Market Program.

(2) **Emphases.** As important and substantial components of the State-wide Tourism Marketing Program, the department will place particular emphasis on branding and on the state's great heritage and culture.

(3) **Sharing of powers.** In marketing and implementation of marketing for tourism, the department may exercise its powers under paragraphs (9) and (11) of Code Section 50-7-8 and may authorize and delegate to agencies all or parts of such powers for their own implementation.

(d) **Coordination.**

(1) **Generally.** The department will implement the State-wide Tourism Marketing Program and will also coordinate its implementation by individual agencies.

(2) **Delegation and agency retention.** The department may delegate marketing implementation activities to agencies in promotion of tourism and may allow agencies to retain marketing and implementation activities in the course of its coordination. The department will coordinate agencies such that they retain a measure of independence and freedom of action in marketing their own specific activities and functions, consistently with the State-wide Tourism Marketing Program.

(3) **Cooperation.** In addition to the specific administrative instructions of this Code section, the department, the Georgia Technology Authority, the Department of Administrative Services, and agencies and other departments and state authorities will assist and cooperate with one another for the purposes of this Code section.

(4) **Budget.** The department may establish an annual budget covering all the costs of establishing and implementing the State-wide Tourism Marketing Program and determine an equitable basis for prorating all or part of the annual costs among the agencies, subject to approval by the Governor. Upon approval, the Governor may direct that the necessary pro rata share of the agencies assessed be made available for expenditure by the department in the same manner as appropriated funds.

(5) **Exclusion from APA.** Coordination of marketing and implementation of marketing for promotion of tourism will not be subject

to the "Georgia Administrative Procedure Act," Article 1 of Chapter 13 of Title 50.

(6) **Agency publications.** Without limitation, the department may determine when the publication of official reports and similar documents, and the production of similar material in other media (such as film, video, sound, and other electronic forms) are deemed conducive to promoting tourism. Agencies will then publish or produce such material and information using themes, a "look," and other marketing elements promulgated by the department for the State-wide Tourism Marketing Program.

(e) **Georgia Tourism Foundation.**

(1) **Establishment.** There is hereby established the Georgia Tourism Foundation, existing as a public corporation and instrumentality of the state, exclusively limited to the following charitable and public purposes and powers:

(A) To solicit and accept contributions of money and in-kind contributions of services and property for the State-wide Tourism Marketing Program;

(B) To make and disburse contributions to the department for such purposes;

(C) To seek recognition of tax exempt status by the United States Internal Revenue Service and to seek confirmation concerning the deductibility of contributions;

(D) To formulate recommendations for the State-wide Tourism Marketing Program;

(E) Subject to approval of the Governor, to create subsidiaries with like character and powers but with limited missions keyed to particular component programs and activities of the department's State-wide Tourism Marketing Program; and

(F) To provide for additional officers and governance through bylaws which are consistent with the goals of lessening the government burden in promoting tourism, establishing and maintaining tax exempt status, and soliciting deductible contributions.

(2) **Members.** The governance of the Georgia Tourism Foundation shall be in members, consisting of not less than nine nor more than 20 members, appointed by the Governor. Members shall always include at least three members of the Board of Economic Development, together with such other members as appointed by the Governor. Service by a member of the Board of Economic Development as a member of the Georgia Tourism Foundation shall not constitute a conflict of interest. A member of the Georgia Tourism Foundation who

is a member of the Board of Economic Development shall serve as the chairperson of the Georgia Tourism Foundation and shall be elected by the members of the Georgia Tourism Foundation. In no event shall members of the Board of Economic Development comprise more than one-third of the members of the Georgia Tourism Foundation. The Georgia Tourism Foundation shall be authorized to fix the precise number of members, within the minimum and maximum numbers, by resolution adopted from time to time at a meeting of the Georgia Tourism Foundation by a majority of all the members of the Georgia Tourism Foundation. No member shall be individually liable for the acts or omissions to act by the foundation.

(3) **Administration.** The Georgia Tourism Foundation shall be attached to the department for administrative purposes. The Attorney General shall be the attorney for the foundation. The department may solicit and accept contributions from the foundation and authorize agencies to do so. The department may cooperate and contract with the foundation for their mutual benefit and authorize agencies to do so. Upon any dissolution of the foundation, its assets will devolve in trust to the department or its successor for use only for marketing to promote tourism for Georgia.

(4) **Public purpose.** The creation of the Georgia Tourism Foundation and the carrying out of its corporate purposes are in all respects for the benefit of the people of this state and constitute a public and charitable purpose. Further, the foundation will be performing an essential governmental function in the exercise of the powers conferred upon it by this Code section. Accordingly, the foundation shall not be subject to taxation or assessment in any manner, including without limitation taxation or assessment upon any transaction, income, money, or other property or activity. The exemptions granted in this Code section shall not be extended to any private person or entity. (Code 1981, § 50-7-17, enacted by Ga. L. 2005, p. 306, § 1/SB 125; Ga. L. 2006, p. 72, § 50/SB 465; Ga. L. 2013, p. 685, § 1/SB 177; Ga. L. 2014, p. 866, § 50/SB 340.)

The 2014 amendment, effective April 29, 2014, part of an Act to revise, modernize, and correct the Code, substituted "Board of Economic Development" for "Board of Development" in the fourth sentence of paragraph (e)(2).

ARTICLE 8

STATE WORKFORCE DEVELOPMENT BOARD

Editor's notes. — This article became effective July 1, 2015.

50-7-90. State Workforce Development Board created; federal composition requirements; meetings; promulgation of rules and regulations authorized; administration of programs.

(a)(1) Pursuant to Public Law 105-220 and any subsequent amendment to such law, the State Workforce Development Board is hereby created.

(2) The State Workforce Development Board shall meet federal composition requirements. The Lieutenant Governor and the Speaker of the House of Representatives shall each have the authority to appoint members as federal law allows. The Governor shall be responsible for selecting the remainder of the members.

(3) The State Workforce Development Board's members' terms of service shall be established by the Governor and shall be at the discretion of the appointing authority.

(4) The State Workforce Development Board shall have powers and duties as specified by the Governor and as provided for in federal law.

(5) The State Workforce Development Board shall meet quarterly or when otherwise requested by the chairperson and will be governed by a set of bylaws which will be voted on and approved by the State Workforce Development Board.

(6) The State Workforce Development Board shall be funded by federal law.

(7) The State Workforce Development Board is authorized to promulgate rules and regulations for purposes of implementing the state's workforce policy while complying with applicable federal laws.

(b)(1) The Department of Economic Development is designated as the administrator of all programs for which the state is responsible pursuant to Public Law 105-220 and any subsequent amendment to such law.

(2) The Department of Economic Development shall administer such programs and their associated funds pursuant to the policies and methods of implementation which are promulgated by the State Workforce Development Board and the Governor.

(3) The Workforce Division within the Department of Economic Development is hereby established and replaces the Governor's Office of Workforce Development. The Governor shall appoint a deputy commissioner of the Workforce Division. (Code 1981, § 50-7-90, enacted by Ga. L. 2015, p. 1084, § 2/HB 348.)

50-7-91. Authorization to develop and facilitate state workforce programs; duties and obligations; creation of contracting guidelines; enforcement and corrective actions.

(a) The State Workforce Development Board is hereby authorized to develop and facilitate the workforce programs in this state. As such, the State Workforce Development Board shall:

(1) Recommend the designation of local workforce investment areas in accordance with federal law:

(A) A local workforce investment area's chief local elected official may designate a local fiscal agent or a grant recipient which shall be either a municipal government, county government, consolidated government, or regional commission located within the physical boundaries of the local workforce investment area and who shall be approved by the State Workforce Development Board in a procedure established through rule;

(B) A local workforce investment area's chief local elected official shall sign and submit to the Workforce Division a budget within ten business days of such budget's approval; and

(C) A local workforce development board shall submit any nonbudgeted expenditure over $5,000.00 to the Workforce Division prior to completing the related transaction unless the Workforce Division has exempted a transaction from this requirement through rule or policy;

(2) Require every newly appointed chief local elected official, local board member, and local executive director to sign and date a conflict of interest statement which will then be submitted to the Workforce Division within ten business days of signature; and

(3) Reserve the right to suspend certification of a local board upon determination that an individual member of that board has violated the conflict of interest statement, until said member has resigned or otherwise been removed from the board.

(b) The Workforce Division shall create, in conjunction with the local workforce development boards, contracting guidelines which shall:

(1) Ensure all independent contractors involved in the provision of One-Stop services have sufficient insurance, bonding, and liability coverage;

(2) Ensure all potential conflicts of interest involving local workforce development board members, local elected officials, and local executive directors are made known prior to the awarding of the associated contract; and

(3) Restrict contracting between local workforce development areas and its members, its local elected officials, or its local executive director or any of those individuals' employees, or immediate family members.

(c) In accordance with paragraph (3) of subsection (a) of Code Section 50-7-90, the State Workforce Development Board may enforce the provisions of this chapter and the applicable federal law if the provisions of either are violated. If corrective actions issued as a result of financial or compliance related monitoring are not adhered to, the State Workforce Development Board may recommend the Governor:

(1) Issue a notice of intent to revoke approval of all or part of the local plan affected; or

(2) Impose a reorganization plan, which may include:

(A) Decertifying the local board involved;

(B) Prohibiting the use of eligible providers;

(C) Selecting an alternative entity to administer the program for the local area involved;

(D) Merging the local area into one or more other local areas; or

(E) Making such other changes as the United States Secretary of Labor or the Governor determines to be necessary to secure compliance with the provision. (Code 1981, § 50-7-91, enacted by Ga. L. 2015, p. 1084, § 2/HB 348.)

CHAPTER 8

DEPARTMENT OF COMMUNITY AFFAIRS

Article 1

General Provisions

Sec.

Article 4

Metropolitan Area Planning and Development Commissions

Sec.

ARTICLE 1

GENERAL PROVISIONS

50-8-18. Energy efficient construction of major state-funded facility projects; short title; legislative findings; "major facility project" defined.

(a) This Code section shall be known and may be cited as the "Energy Efficiency and Sustainable Construction Act of 2008."

(b) The General Assembly finds that the welfare of this state is enhanced by the promotion of effective energy and environmental standards for construction, rehabilitation, and maintenance of state-funded facilities and that such standards in turn improve this state's capacity to design, build, and operate high-performance buildings, contributing to economic growth, promoting job development, and increasing energy conservation.

(c) For purposes of this Code section, "major facility project" means a state-funded:

(1) New construction building project of a building exceeding 10,000 square feet;

(2) A renovation project that is more than 50 percent of the replacement value, as determined by the Department of Administrative Services Risk Management Division, of the facility, a change in occupancy, or any roof replacement project exceeding 10,000 square feet; or

(3) A commercial interior tenant fit-out project exceeding 10,000 square feet of leasable area where the state is intended to be the lessor of such property.

A major facility project shall not include a building, regardless of size, that does not have conditioned space as defined by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) and shall not include a state owned building that is on the historical registry or any local, county, or municipal building.

(d) Consistent with the intent of this Code section, the department, in consultation with the Georgia State Financing and Investment Commission, shall adopt policies and procedures as recommended standards for all buildings owned or managed by this state that:

(1) Optimize the energy performance;

(2) Increase the demand for construction materials and furnishings produced in Georgia;

(3) Improve the environmental quality in this state by decreasing the discharge of pollutants from such state buildings;

(4) Conserve energy and utilize local and renewable energy sources;

(5) Protect and restore this state's natural resources by avoiding the development of inappropriate building sites;

(6) Reduce the burden on municipal water supply and treatment by reducing potable water consumption;

(7) Establish life cycle assessments as the appropriate and most efficient analysis to determine a building project's environmental performance level; and

(8) Encourage obtaining Energy Star designation from the United States Environmental Protection Agency to further demonstrate a building project's energy independence.

(e) All major facility projects may be designed, constructed, and commissioned or modeled to exceed the standards set forth in ASHRAE 90.1.2004 by 30 percent where it is determined by the department that such 30 percent efficiency is cost effective based on a life cycle cost analysis with a payback at no more than ten years. Commissioning or modeling must be performed by a professional engineer, design professional, or commissioning agent using software methodology approved by the Internal Revenue Service, the Department of Energy, current ASHRAE standards, or other similar methodology. For all major renovation projects, such requirements shall apply to the specific building assemblies, envelope components, and equipment involved in the project.

(f) All major facility projects shall be designed, constructed, and commissioned or modeled to achieve a 15 percent reduction in water use

when compared to water use based on plumbing fixture selection in accordance with the Energy Policy Act of 1992.

(g) To achieve sustainable building standards, construction projects may utilize a nationally recognized high performance energy modeling and environmental building rating system; provided, however, that any such rating system that uses a material or product based credit system that operates to the detriment of materials or products manufactured or produced in Georgia shall not be utilized. The department shall designate rating systems that meet these criteria and is authorized to establish its own alternative rating system. All major facility projects shall include Georgia products such that not less than 10 percent of all building materials used in a project are harvested, extracted, or manufactured in the State of Georgia where such products are commercially available in a manner consistent with the purposes of this Code section.

(h) A professional engineer, design professional, or commissioning agent shall certify that the building project's systems for heating, ventilating, air conditioning, energy conservation, and water conservation are installed and working properly to ensure that each building project performs according to the building's overall environmental design intent and operational objectives. (Code 1981, § 50-8-18, enacted by Ga. L. 2008, p. 224, § 4/SB 130; Ga. L. 2014, p. 866, § 50/SB 340.)

The 2014 amendment, effective April 29, 2014, part of an Act to revise, modernize, and correct the Code, substituted "Georgia State Financing and Investment Commission" for "Georgia State Finance and Investment Commission" in the introductory language of subsection (d).

ARTICLE 4

METROPOLITAN AREA PLANNING AND DEVELOPMENT COMMISSIONS

50-8-84. Composition of membership of commission; redistricting of areas removed from jurisdiction of existing commission.

(a) The members of a commission for an area shall consist of:

(1) The chairman of the board of commissioners of each county within the area;

(2) The mayor of the most populous municipality within the area;

(3) From each county within the area, except the most populous county within the area, the mayor of a municipality within such county, to be designated by majority vote of the mayors (except the

mayor of the most populous municipality within the area) of all municipalities lying within such county, provided that if the mayors of the municipalities eligible to vote on such matter fail to designate one of their number within 45 days after a vacancy exists, one of their number shall be selected by a majority vote of the county commission of the applicable county;

(4) From the most populous county within the area, the mayor of a municipality located within the northern half of such county elected by majority vote of the mayors of all municipalities located within the northern half of such county and the mayor of a municipality located within the southern half of such county elected by a majority vote of the mayors of all municipalities located within the southern half of such county, provided that if the mayors of the municipalities eligible to vote on such matter fail to designate one of their number within 45 days after a vacancy exists, one of their number shall be selected by a majority vote of the county commission of the most populous county in the area;

(5) A member, the president, or the presiding officer of the legislative body of the most populous municipality lying within the area chosen by majority vote of the members of that legislative body; and

(6) Fifteen at-large members not holding elective or appointed public office and not employed by any of the political subdivisions of the area, who shall be elected as follows:

(A) Within ten days after a commission has been activated pursuant to Code Section 50-8-82 and within 90 days after the publication of a subsequent United States decennial census, the members of the General Assembly whose representative or senatorial districts lie wholly or partially within an area shall meet upon call by the Speaker of the House of Representatives and the President of the Senate and shall divide the area into 15 districts. Each district shall contain approximately the same population; shall consist of combinations of contiguous census tracts from the latest available United States decennial census; but may cross the boundary lines of political subdivisions; and

(B) Within ten days after the area has been so divided into districts, the public members of a commission shall meet upon call of the chairman of the county commission of the most populous county within its area and elect one resident of each district as a member of the commission.

(b) Any other provision of this article to the contrary notwithstanding, the General Assembly shall be authorized by local Act to remove any county within an area from the provisions of this article upon the recommendation of a majority of the full membership of the board of commissioners of any such county.

(c) Within 90 days after any area, county, or municipality is added to or removed from the jurisdiction of an existing commission under the provisions of paragraph (1) of Code Section 50-8-80 or subsection (b) of this Code section, the resulting area shall be redistricted and the 15 members at large shall be elected in accordance with paragraph (6) of subsection (a) of this Code section relative to redistricting after a United States decennial census. (Code 1981, § 50-8-84, enacted by Ga. L. 1982, p. 2107, § 51; Ga. L. 1984, p. 653, § 1; Ga. L. 1988, p. 1834, §§ 2, 3; Ga. L. 1997, p. 442, §§ 2, 3; Ga. L. 2014, p. 18, § 2/SB 367.)

The 2014 amendment, effective April 10, 2014, inserted ", the president, or the presiding officer" near the beginning of paragraph (a)(5).

ARTICLE 11

DOWNTOWN RENAISSANCE FUND

Editor's notes. — This article became effective April 16, 2014.

50-8-260. Definitions.

As used in this article, the term:

(1) "Department" means the Department of Community Affairs.

(2) "Fund" means the Georgia Downtown Renaissance Fund, a revolving loan fund originating low-interest loans for qualified investments in a downtown district. (Code 1981, § 50-8-260, enacted by Ga. L. 2014, p. 300, § 1/HB 128.)

50-8-261. Short title; establishment; director; application for assistance; fees; rules and regulations.

(a) This article shall be known and may be cited as the "Georgia Downtown Renaissance Fund Act."

(b) The Georgia Downtown Renaissance Fund is established within the department for the purpose of assisting local governments, downtown development authorities, urban redevelopment authorities, special districts, and nonprofit organizations with financing and technical assistance to encourage economic and small business development, historic preservation, private investment, public improvements, leadership development, training, design assistance, and financing in the effort of improving downtown districts.

(c) The commissioner of community affairs shall serve as the director of the fund.

(d)(1) Using such funds as may be appropriated, the office may provide assistance to eligible local governments, urban redevelop-

ment authorities, development authorities, or downtown development authorities in the form of technical assistance, loans, loan guarantees, or any combination thereof.

(2) Appropriated funds by line item in any appropriations Act for the Georgia Downtown Renaissance Fund shall be used for project financing and be disbursed through rules and procedures promulgated by the Office of Downtown Development.

(3) The initial investment into the Georgia Downtown Renaissance Fund shall be capped on an annual basis of $5 million per year for up to four years, not to exceed $20 million.

(e) The department may apply for, receive, administer, and use any grant, other financial assistance, or other funds made available to the department from any government or other source for furthering the purposes of the fund.

(f) Each municipal corporation in this state may make application to the department for assistance in downtown district development. A major criteria to be used in determining the amount of any financial assistance granted by the department from the fund may be the local commitment to the redevelopment of the downtown district.

(g) The department shall be authorized to charge reasonable application or service fees to offset administrative costs incurred in the administration of the fund.

(h) The department shall be authorized to promulgate any rules and regulations necessary to implement and administer this Code section. (Code 1981, § 50-8-261, enacted by Ga. L. 2014, p. 300, § 1/HB 128.)

ARTICLE 12

METROPOLITAN TRANSPORTATION PLANNING PROCESS FOR ATLANTA URBANIZED AREA AND ATLANTA AIR QUALITY REGION

Effective date. — This article became effective July 1, 2015.

50-8-280. Metropolitan Transportation Planning Process established; determination of regional air quality planning area; participating governmental units; funding; policy boards; conflict of laws.

(a) Contiguous local governments within which lie designated portions of the Atlanta Urbanized Area, as defined in 23 U.S.C. Section 101(a) (37), or air quality nonattainment areas, as identified under the federal Clean Air Act, 42 U.S.C. Section 7401, et seq., shall participate

in a metropolitan transportation planning process through a metropolitan planning organization established by one or more units of government, or through a metropolitan planning process established through their area regional commission.

(b) The metropolitan transportation and air quality planning area for each regional commission established pursuant to Code Section 50-8-32 and metropolitan area planning and development commission established pursuant to Code Section 50-8-82 shall be defined by paragraph (1) of subsection (f) of Code Section 50-8-4.

(c) Any unit of government that is participating as a limited member of a metropolitan area planning and development commission for transportation purposes and is located outside the planning area defined by paragraph (1) of subsection (f) of Code Section 50-8-4 shall be authorized, on or after July 1, 2015, to designate the local area regional commission to serve as the metropolitan planning organization.

(d) Any unit of government that is not participating as a limited member of a metropolitan area planning and development commission for transportation purposes shall continue to perform metropolitan planning in accordance with 23 U.S.C. Section 134.

(e) Regional commissions and metropolitan area planning and development commissions shall be provided funding by the appropriate state and regional entities to develop a comprehensive transportation and air quality plan for affected local governments within the Atlanta Urbanized Area as defined by the United States Census Bureau and further defined by paragraph (1) of subsection (f) of Code Section 50-8-4.

(f) Each regional commission established pursuant to Code Section 50-8-32 and metropolitan area planning and development commission established pursuant to Code Section 50-8-82 shall establish a policy board that shall govern the transportation and air quality planning process for all affected areas, approve plans, and have equal voting representation from affected local governments.

(g) In the event of any conflict between the provisions of law governing metropolitan planning and development commissions and those governing regional commissions, the laws defined in this Code section shall control and shall govern the metropolitan transportation planning area funding and planning responsibilities. (Code 1981, § 50-8-280, enacted by Ga. L. 2015, p. 1329, § 9/SB 4.)

CHAPTER 9

GEORGIA BUILDING AUTHORITY

Article 1

General Provisions

ARTICLE 1

GENERAL PROVISIONS

50-9-6. Authorization for projects and facilities on Confederate Soldiers' Home property.

Reserved. Repealed by Ga. L. 2015, p. 385, § 2-9/HB 252, effective July 1, 2015.

Editor's notes. — This Code section was based on Ga. L. 1955, p. 585, § 1.

Ga. L. 2015, p. 385, § 1-1/HB 252, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'J. Calvin Hill, Jr., Act.'"

CHAPTER 12

COMMISSIONS AND OTHER AGENCIES

Article 9

War of 1812 Bicentennial Commission

ARTICLE 9

WAR OF 1812 BICENTENNIAL COMMISSION

50-12-140 through 50-12-147.

Repealed by Ga. L. 2008, p. 730, § 1/HB 953, effective December 31, 2015.

Editor's notes. — This article was based on Ga. L. 2008, p. 730, § 1/HB 953.